

CITY OF HUNTSVILLE, TEXAS

J. Turner, Mayor



Dalene Zender, Position 1
Melissa Templeton, Position 2
Charles Forbus, Position 3
Lanny D. Ray, Mayor Pro Tem

Tom Cole, Ward 1
Mac Woodward, Ward 2
Jack Wagamon, Ward 3
Wayne Barrett, Ward 4

HUNTSVILLE CITY COUNCIL AGENDA REGULAR SESSION (6:00PM) TUESDAY, JUNE 1, 2010

COUNCIL CHAMBERS
HUNTSVILLE CITY HALL, 1212 AVENUE M

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact the City Secretary's office (936.291.5403), two working days prior to the meeting for appropriate arrangements.

REGULAR SESSION [6:00PM]

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

U.S. Flag

Texas Flag: Honor the Texas Flag. I pledge allegiance to thee, Texas, one state under God, one and indivisible.

3. INVOCATION

4. PROCLAMATIONS AND PRESENTATIONS

5. PUBLIC COMMENT

6. CONSENT AGENDA

(Approval of Consent Agenda authorizes the City Manager to implement each item in accordance with staff recommendations. An item may be removed from the Consent Agenda and added to the Statutory Agenda for full discussion by request of a member of Council.)

- a. Approve the minutes of the City Council meeting held on the 18th of May 2010. [Lee Woodward, City Secretary] p. 1-7
- b. Approve Ordinance 2010-36 to approve stop signs on Avenue O at 21st Street, 2nd reading. [Aron Kulhavy, Director of Public Works] p. 8-16
- c. Approve Ordinance 2010-37 to approve No Parking signs on the north side of 1st Street from MLK to Bernice Street, 2nd reading. [Aron Kulhavy, Director of Public Works] p. 17-20
- d. Approve Ordinance 2010-31 on the proposed amendment to Section 24-1 Regulations Adopted of the Code of Ordinances, 2nd reading. [Aron Kulhavy, Director of Public Works] p. 21-24
- e. Approve the engagement of the law firm of Bickerstaff, et al. for legal services related to water supply projects not to exceed \$25,000 for initial phase. [Carol Reed, Director of Public Utilities; Leonard Schneider, City Attorney]
- f. Approve tap fee waiver in accordance with previous informal agreements. [Aron Kulhavy, Director of Public Works] p. 25-28
- g. Authorize City Manager to approve Schenck Builders LLC, Conroe, Texas to construct low income housing with TDHC grant funds with City matching requirements. [Winston Duke, Finance Director] p. 29-33
- h. Authorize the City Manager to apply for, accept if awarded, and implement the H-GAC Solid Waste Management grant for Recycling Carts. [Dr. Sherry McKibben, Community Development Specialist] p. 34
- i. Authorize the City Manager to apply for, accept if awarded, and implement the H-GAC Solid Waste Management grant for Recycling Center Improvements. [Dr. Sherry McKibben, Community Development Specialist] p. 35
- j. Approve Resolution 2010-27 and authorize the City Manager to apply for, accept upon award, implement, and execute the Interlocal Agreement with Walker County for the 2010 Edward Byrne Justice Assistance Grant (JAG). [Dr. Sherry McKibben, Community Development Specialist] p. 36-39
- k. Authorize the City Manager apply for, accept if awarded, and implement the Office of Justice Bullet Proof Vest Grant. [Dr. Sherry McKibben, Community Development Specialist] p. 40
- l. Ratification of the application for, and authorization to accept, if awarded, and implement the Assistance to Firefighter Grant. [Dr. Sherry McKibben, Community Development Specialist] p. 41
- m. Approve abandonment of the Shepherd Drive Right-of-Way in the Forum Sam Houston plat as approved, in the preliminary plat, by the Planning and Zoning Commission. [Aron Kulhavy, Director of Public Works] p. 42-45

7. MAYOR/CITY COUNCIL AND CITY MANAGER REPORT

- a. *Presentation and discussion on Trinity River Authority (TRA)-City of Huntsville water contracts. [Councilmember*

Woodward, City Attorney Leonard Schneider, Director of Public Utilities Carol Reed] p. 46-93

- b. *Presentation, discussion and possible action* to cancel the option for additional 10mgd from TRA, exercised through October 17, 2006 minute order. [Councilmember Wagamon]
- c. Discussion regarding possible use of City equipment to facilitate clearing of lot on Smith Hill Road, with work to be performed by citizen volunteers and police association. [Councilmember Wagamon]
- d. City Manager's Report
 - 1. Update on Safe Routes to School grants
 - 2. Employee benefits and liability growth

8. PUBLIC COMMENT

9. MEDIA INQUIRIES RELATED TO MATTERS ON THE AGENDA

10. ITEMS OF COMMUNITY INTEREST

(Hear announcements concerning items of community interest from the Mayor, Councilmembers, and City staff for which no action will be discussed or taken.)

11. ADJOURNMENT

*If, during the course of the meeting and discussion of any items covered by this notice, City Council determines that a Closed or Executive session of the Council is required, then such closed meeting will be held as authorized by Texas Government Code, Chapter 551, Sections: 551.071 – consultation with counsel on legal matters; 551.072 – deliberation regarding purchase, exchange, lease or value of real property; 551.073 – deliberation regarding a prospective gift; 551.074 – personnel matters regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; 551.076 – implementation of security personnel or devices; 551.087 – deliberation regarding economic development negotiation; and/or other matters as authorized under the Texas Government Code.

If a Closed or Executive session is held in accordance with the Texas Government Code as set out above, the City Council will reconvene in Open Session in order to take action, if necessary, on the items addressed during Executive Session.

CERTIFICATE

I, Lee Woodward, City Secretary, do hereby certify that a copy of the June 1, 2010, City Council Agenda was posted on the City Hall bulletin board, a place convenient and readily accessible to the general public at all times, and to the City's website, www.huntsvilletx.gov, in compliance with Chapter 551, Texas Government Code.

DATE OF POSTING: _____

TIME OF POSTING: _____ am/pm

TAKEN DOWN: _____ am/pm

Lee Woodward, City Secretary

MINUTES FROM THE HUNTSVILLE CITY COUNCIL MEETING HELD ON THE 18th DAY OF MAY 2010, IN THE CITY HALL, LOCATED AT 1212 AVENUE M IN THE CITY OF HUNTSVILLE, COUNTY OF WALKER, TEXAS AT 6PM.

The Council met in a regular session with the following:

COUNCILMEMBERS PRESENT: J. Turner, Mac Woodward, Jack Wagamon, Dalene Zender, Melissa Templeton, Charles Forbus, Lanny Ray, Wayne Barrett, Tom Cole

COUNCILMEMBERS ABSENT: none

OFFICERS PRESENT: Bill Baine, City Manager; Leonard Schneider, City Attorney, Lee Woodward, City Secretary

WORKSHOP SESSION [5:00PM]

The Council will hear a presentation from Bush Power Group and Susan Snyder, Energy Specialist for the City of Huntsville, concerning a proposed plasma arc-solid waste-to-energy-and-diesel facility. [Dr. Sherry McKibben, Community Development Specialist]

The Mayor called the meeting to order at 5:00pm.

City Manager Bill Baine presented Gary Bush and Jay Bush of the Bush Power Group, LLC of The Woodlands, Texas. Mr. Jay Bush gave a short PowerPoint presentation on the proposed plasma arc project. The Mayor asked how many jobs this might create, and was told roughly 50-75. The Mayor asked if the process would require water and was told the amount varies depending on the amount in the municipal solid waste stream. The Mayor asked if a pipeline for water would also be provided by the City, and Gary Bush said it would depend on location to the Trinity River supply.

Councilmember Forbus asked how much waste would be needed daily, and was told they were planning on about 120 tons per day, what they were told the City was generating now. Mr. Bush said it also creates an opportunity for others to bring in additional waste supplies. Mr. Gary Bush said incinerators and boilers do not reach the same temperatures as their proposed facility would, and that the slag produced by the proposed facility has been deemed seven times less leachable than Coca-Cola glass. He added that their facility did not create fly ash or clinkers, as in less hot facilities.

Councilmember Cole asked if organized counter opposition usually met these type projects. Gary Bush said he had seen some, but usually in response to open facilities and that the proposed facility would be fully enclosed. He said they had talked to Arkansas, Louisiana, Bryan/College Station and Waco, for example, but that the financial backers were not ready for such large projects. Councilmember Wagamon asked about the proposal of adding 1 ton of water per ton of garbage or less, and Gary Bush said it was frequently much lower, that they were not planning to drill wells or drain the local water. Councilmember Wagamon asked if they would be able to process waste brought in from other communities or individuals. Gary Bush said he felt they could handle a 25% increase per hour, and that he would like to petition College Station for their tire waste.

Councilmember Forbus asked about other locations with these facilities. Gary Bush said they were around the world, but that many in the U.S. were coal gasification, which used a lot of coal and were very expensive to operate. Gary Bush said taxpayers have been paying a lot of money to bury waste, and listed the benefits of having the facility in the current transfer station location. Councilmember Forbus asked what safety issues should be considered. Gary Bush said diesel storage tanks and described the safety measure taken. Mr. Bush said the gasifier works as a vacuum and is electrically operated, so can be shut down with a flip of a switch, as opposed to other types of gasification facilities. Mr. Bush said that was what had originally sold him on this project type.

Councilmember Forbus asked if the company would handle all the legal requirements and certifications, and Gary Bush confirmed they would. Councilmember Templeton asked about selling leftover electricity back to the electric company. Gary Bush said he understood Entergy was not very cooperative about taking power back into their grid, and that it was a long and arduous task to get other small companies to take it, but that the proposed facility would offer an alternative based on their "black star capability", although they would rather work with the City to develop a local industrial park to use the energy.

Councilmember Barrett asked about the Bush Power Group and other projects. Gary Bush said the website was BushPowerGroup.com, and that he had over forty years of experience, and had worked on projects worldwide. He said his department at Enron had handled every Enron plant since 1994. Mr. Bush said he did corporate due diligence and a yearlong study at Enron before it "imploded," and added that the loss of Enron had impacted financing for energy projects. Councilmember Barrett asked about other cities currently with the same type facility. Mr. Bush said there were other cities using other types of coal gasification to create electricity, which used a combustion process releasing large amounts of carbon dioxide, but that his facility did not create the same hazards and emissions.

Gary Bush said two California companies told him that within 60 days of receiving Memoranda of Understanding and leases and commitments for twenty years, they would fully fund the project with no payment or interest for two years. Councilmember Barrett asked if there were competing plasma-arc technology firms that would do the construction and if the Bush Power Group had compared and chosen one. Gary Bush said there were two types of furnaces, and that his facility would use a carbon rod method. He said there were also competing electric technologies, some of which produced ash (unburned carbon).

Councilmember Wagamon asked about the plants venting CO₂, and pointed out that it would be released when the diesel was eventually used and burned. He said his concern was keeping more waste out of the landfill, and made a motion of approval in response to Gary Bush's comment that it was fuel produced in America, not in Saudi Arabia. The Mayor asked about a general timeline. Gary Bush said they anticipated eighteen months from the time they received their permits, and would need the City's assistance with Austin. The Mayor said the City Manager had mentioned it was a low sulfur diesel produced. Mr. Bush

concurrent, and said refineries spend a lot of money getting down to 15ppm, but that his facility produced diesel with one-tenth of that.

The Mayor thanked the Bush Power Group for their presentation.

The workshop adjourned at 5:43pm.

REGULAR SESSION* [6:00PM]

1. CALL TO ORDER

Mayor Turner called the meeting to order at 6:00pm.

2. PLEDGES OF ALLEGIANCE

3. INVOCATION

Councilmember Barrett gave the invocation.

4. PROCLAMATION

The Mayor presented Proclamation 2010-43 to John Waldo for Hurricane Preparedness Week.

The Mayor presented Proclamation 2010-41 to the employees of the City of Huntsville in honor of Public Works Week.

The Mayor presented Proclamation 2010-48 to James Archie honoring his 32 years of service to the City of Huntsville.

The Mayor presented Proclamation 2010-45 to the Huntsville High School Boys' Golf Team on the event of their achievements at the State 4A competition.

The Mayor presented Proclamation 2010-46 to the Huntsville High School Boys' and Girls' Track Teams on the event of their achievements at the State 4A competition.

The Mayor presented the family of Patsy Pierce for her dedication and hard work on the Beautification Committee.

Ann Todd of Methodist Hospital and the Texas Council on Cardiovascular Disease and Stroke presented the City with an Honorable Mention as a Heart and Stroke Healthy City Recognition Program.

Susan Wireman and Mike Bradley of the Detachment 1, 366th Military Police Company presented the Mayor with a Certificate of Appreciation.

5. PUBLIC COMMENT

Tarek Maalouf said he felt the Council was embarrassing the City on a number of recent decisions, and urged them to meet with the public. He said he thought the Council was out of control.

6. PUBLIC HEARING

- a. **The City Council of the City of Huntsville, Texas will hold a Public Hearing to discuss, receive input, and act upon an ordinance concerning an amendment of Tax Increment Reinvestment Zone Number One, Huntsville, Texas, Project Plan and Finance Plan and expansion of the Zone boundary, making certain findings, and other matters related thereto, and allowing any interested person the opportunity to appear, and speak for or against the benefits of these changes to the City, its residents and property owners in Tax Increment Reinvestment Zone Number One. [Aron Kulhavy, Director of Public Works]**

No one spoke for or against the Public Hearing.

- b. **The City Council of the City of Huntsville, Texas will hold a Public Hearing to consider an amendment to Chapter 24, Land Development, Code of Ordinances, regarding section 24-1, on which Huntsville City Council plans to take action. [Aron Kulhavy, Director of Public Works]**

No one spoke for or against the Public Hearing.

7. CONSENT AGENDA

(Approval of Consent Agenda authorizes the City Manager to implement each item in accordance with staff recommendations. An item may be removed from the Consent Agenda and added to the Statutory Agenda for full discussion by request of a member of Council.)

- a. **Approve the minutes of the City Council meeting held on the 4th of May 2010. [Lee Woodward, City Secretary]**
- b. **Approve the minutes of the Employee Grievance Hearing held on the 3rd of May 2010. [Lee Woodward, City Secretary]**

- c. Approve Ordinance 2010-36 to approve stop signs on Avenue O at 21st Street, 1st reading. [Aron Kulhavy, Director of Public Works]
- d. Approve Ordinance 2010-37 to approve No Parking signs on the north side of 1st Street from MLK to Bernice Street, 1st reading. [Aron Kulhavy, Director of Public Works]
- e. Approve the Christian Community Construction Team, a nonprofit 501C organization, ID#76-0417488 to tear down, salvage, and haul off debris from the Records Building at 1305 Avenue M. [Aron Kulhavy, Director of Public Works]
- f. Authorize City Manager to award contracts for Real Estate Appraisal and Land Surveyor to Property Insight Property Services, Home Inspection to Insight Property Inspections and Title Service to Walker County Title Company. [Winston Duke, Finance Director]
- g. Authorize City Manager to purchase one compact truck and one police flex-fuel SUV from Tommy Vaughan Ford, purchase two 3/4 ton trucks from Caldwell Country and to purchase police equipment from Napa Auto Parts, Safety Vision, Decatur and Graphics Int., with installation by Napa Auto Parts for an amount of \$78,480.00 as identified in the bid tabulation.

Councilmember Templeton made a motion to approve the consent agenda. Councilmember Zender seconded the motion.

Councilmember Barrett asked to pull items f and g for discussion. Councilmember Woodward asked to pull item e, and asked if the recording of the May 3, 2010 hearing could be stored with the minutes of the meeting. The City Secretary confirmed that could be done. Councilmember Ray reminded the Council that a transcript of the May 3, 2010 hearing had not been requested.

The motion passed unanimously to approve items a, b, c, and d.

Councilmember Woodward said that item e concerned a contract without a beginning or end date. The City Manager said he believed it would be about three weeks. Aron Kulhavy, Director of Public Works, said he believed it could be completed within thirty days and that work would begin as soon as the contract was executed.

Councilmember Woodward made a motion to approve the contract with the addition that the contract would be completed within 45 days.

Mr. Kulhavy confirmed for Councilmember Templeton that inspection and work to ensure asbestos abatement had been completed at the site.

The motion passed unanimously.

Councilmember Barrett addressed item f asking for the items to be separated. Winston Duke recommended accepting the bid but recommended removing the land surveying portion to be decided later, due to issues with the pricing and the state purchasing guidelines.

Councilmember Barrett moved the contract be accepted pending removal of the land surveying. The motion was seconded by Councilmember Ray. The motion passed unanimously.

Councilmember Barrett said he did not object to item g, but would like a brief summary before approving this amount. The City Manager said he had been holding off on vehicle replacement for about 20 months. Winston Duke said the budget for the replacement programs had approximately three-quarters of a million dollars. The City Manager said they had been aging the fleet purposefully, but they needed the vehicles on this item. Councilmember Templeton asked about the equipment being installed. Billie Smith confirmed it was sirens, light bars, radios and other standard items.

The motion passed unanimously.

8. STATUTORY AGENDA

- a. **Presentation, discussion and possible action to approve Ordinance 2010-31 on the proposed amendment to Section 24-1 Regulations Adopted of the Code of Ordinances, 1st reading.** [Aron Kulhavy, Director of Public Works]

The Mayor confirmed this was the first reading of the Ordinance. Mr. Kulhavy informed the Council the purpose was to include amendments, and that the proposal had been reviewed and approved by the Planning and Zoning Commission.

9. MAYOR/CITY COUNCIL AND CITY MANAGER REPORT

- a. **Presentation, discussion and possible action to approve nomination of Rolando Salazar to the Huntsville Housing Authority as a Resident Commissioner.** [Mayor Turner]

The Mayor made a motion to approve Mr. Salazar. Councilmember Ray seconded the motion. The motion passed unanimously.

- b. **Presentation and discussion of Channel 7 six-month report on extended alcohol sales hours.**

[Councilmember Ray]

Councilmember Ray said Channel 7 had, on May 4, 2010, aired a student news story about the extended drinking hours and effect on students, and showed a clip with Deputy Chief James Fitch of the University Police Department. Councilmember Ray said he found it to be a positive story overall, especially Dep. Chief Fitch's comments that they had not seen a significant increase in violations.

c. *Discussion of water system capacity issues in relation to Texas Commission on Environmental Quality (TCEQ) regulations.* [Councilmember Wagamon]

Councilmember Wagamon asked if Tenaska was on a meter. The Mayor said he believed that was true, but recommended he ask Carol Reed, Director of Public Utilities. The City Manager said Tenaska consumption goes up and down.

Additionally, Councilmember Wagamon recalled the Council asking the City Attorney to review the TRA contract about the right to renew it after 2020. Mr. Schneider said he had reviewed the contract and the answer was no. Councilmember Ray recalled that the Council had worked on two premises, the first that the contract guaranteed the right to get water past 2020, but he did not find any renewal in the contract.

d. *Update on May 11 Cultural District Day events.* [Councilmember Zender]

Councilmember Zender referred to Linda Pease, Cultural Service Coordinator, who gave a post-event report on the Texas Tourism Rally, held in town on May 11, 2010, sponsored by the Texas Commission on the Arts and specifically tailored to state media. Mrs. Pease also showed a You-Tube clip covering the events, which focused on the Cultural District.

e. *Presentation, discussion and possible action on rules of procedure for press releases.* [Councilmember Ray and Mayor Turner]

The Mayor discussed three levels of the organization: the Council as a whole, Committees, and individual Councilmembers. He said the Communications and Service Committee handles day-to-day communications. The Mayor mentioned the Rules of Procedure [Rules], saying the overall Council is the governing influence for the Rules, and that the Rules can be changed at any-time.

Councilmember Ray said he had concerns on unnecessary turmoil over press releases. He said there was a standard procedure for press releases, that they go to the Public Information Office and were reviewed by the Communications Committee, then go out, and that circulation through the Council would be a violation of the Open Meetings Act.

Councilmember Woodward asked where it said the Communications Committee could issue press releases on behalf of the Council. The Mayor said he didn't believe there was anything like that. Councilmember Woodward said Councilmember Ray had said the Committee could, but Councilmember Ray said he had said the Committee was supposed to approve press releases. Councilmember Woodward read about the Council Committees from the Rules of Procedure, 10.3 C, and that he didn't know committees had authority. Councilmember Ray said it was a delegation by the Council, that the press releases come out of the Public Information Office, that the City Manager generally suggests them, but that anyone could and the Public Information Officer would "decide if one needs to go" although none were to go out without the City Manager's approval.

Councilmember Woodward said his concern was about the nature and the content of the releases, especially things that looked like City policy or a Council decision. The Mayor asked if the Council was discussing the procedure versus the content of this particular press release. Councilmember Woodward said he was concerned about this particular recent release, as it was viewed as the Council's explanation or opinion, but that the Council had never approved that. The Mayor said the Public Information Officer did the initial draft, the Communications Committee reviewed the draft, and then it went back to the Public Information Officer. Councilmember Woodward asked if the Mayor was saying the Deputy City Secretary did the first draft, and the Mayor said he thought that was the case. Councilmember Woodward said that would be the third person whom he had been told wrote the draft.

Councilmember Zender said she could clarify, that she had drafted something briefly, that wasn't close to what was released, that it was just some thoughts she had had concerning the items in The Huntsville Item that made some claims that bothered her. She said she sent her thoughts to Mr. Baine, who had the Deputy City Secretary revise them, and got some quotes from Interim Chief Kevin Lunsford and Councilmember Forbus.

In response to a question from Councilmember Woodward, City Attorney Leonard Schneider said he read the release before it was released, and that his initial recommendation was that it not be released worded as being an action of the Council. Councilmember Woodward asked Mr. Schneider if he thought it appeared that way as released, and Mr. Schneider said it was open to that interpretation.

Councilmember Wagamon asked if press releases have ever come back to the City Council for a vote before release, the Mayor said not to his knowledge. Councilmember Wagamon said that if there were specific problems with the release, they deserved an airing.

Councilmember Barrett said he had a lot of problems with what happened, not just the particular release. He said it had made him feel there was a need for a more detailed policy and understanding about press releases; who will do it, who will have responsibility for it, and whose name will be on it. He said that when one started entering an area of disputation and controversy, it was very serious for a press release to go out saying "The City of Huntsville would like to formally address the recently publicized statements." He said that if it said a particular Councilmember said something, or the Communications Committee, or the City Manager said something, that would be okay. He addressed the fact that the press release was retracted and then the retraction was then retracted, making the need for a clear policy even more obvious. He said it was important to him that the staff not get caught in the middle.

Councilmember Barrett said the more sensitive the issue, the more deliberative, concise and professional the effort should be. He said he would not come up with policy issues on his own. He said he was very concerned about the statement released, that he didn't think the release could be accurately described to have come from the City of Huntsville, and that whatever that meant, it wasn't from him.

Councilmember Forbus said he took full responsibility for the release and apologized for using the byline The City of Huntsville. He said the reason "he put it out" was that the individual in Austin had said that police officers were afraid of doing their regular jobs, and that he thought the citizens of Huntsville should not worry about officers coming out to do their jobs based on the statement of someone in Austin saying they were. He said he thought they needed to address this. He apologized for not notifying the Council the release was going out, but said he was told he could not send it around because it would possibly be a violation of the Open Meetings Act. Councilmember Forbus said he felt the citizens needed to know the police officers were out there to do their jobs with a positive attitude every day.

Councilmember Templeton said all the Councilmembers are on committees and they should realize that, even unintentionally, they shape policy and decision-making by talking to staff and giving input. She said, however, that there was a blatant attack on the Council and the stability of the Police Department and how they were perceived by the public, and deserved an immediate and unambiguous response. She also said supported and was proud of the Communications Committee.

Councilmember Cole seconded Councilmember Templeton. He said they had a dynamic, ongoing legal situation that required a reaction in the interest of the public and that he also supported the action of the Communications Committee. He discussed an issue that had occurred at the Hospital District, and said he felt the Communications Committee did what they had to do.

Councilmember Woodward said the issue was the manner of the response, not whether a response was required. He said he was concerned about the process. He reminded Councilmember Wagamon of an article a few months prior that Councilmember Wagamon thought should have had input on. Councilmember Woodward said if something said, "The City of Huntsville says," then that was policy and the Council should be in agreement or at least have voted on the issue.

Councilmember Wagamon responded and said that he felt that if weighty issues were going to come before the City Council, that they should not be supported or opposed in the press by the Staff, specifically one that had come from the Police Department. He further said the issue is that there is a newspaper that has threatened the Mayor in the past, that there are people who can rule the opinion page as they choose, and said he was sure that everyone recalled the paper had stopped dissent on the opinion page when they didn't like the way the politics were going. He recalled personal issues with the Item concerning price and anonymity.

Councilmember Ray mentioned the May 5th, 2010 Item story that cited no sources, no substantiation, and did not ask for City comments and quoted portions saying police officers were afraid to do their jobs. He said it was a time critical public safety issue that would make him question why anyone would not see the need for a response. He said the City Staff has always spoken for the City of Huntsville, whether he liked it or not. Councilmember Ray said Councilmember Wagamon's comments were about staff speaking on policy, but that this was a correction, not a policy issue, and continuing threat.

City Attorney Leonard Schneider said they needed to focus a little more on press releases. Councilmember Forbus said he had sent the Council a "mea culpa" after the release, but would not have changed any word in the release except "The City of Huntsville."

Councilmember Barrett said he did not and was not questioning the motives of any Councilmember, that he did not say the City shouldn't have a response, but that he thought there should be a clearer policy on who would say and who would take responsibility. He said it was easy to envision an issue on which the Council was divided, and that it was very sensitive when the City had a viewpoint, but that he had no objection to any individual Councilmember having a response. Councilmember Barrett said he also did not think they could blame the Council's policy or lack of it on The Huntsville Item. He said their responses should be thoughtful, measured and high road, so that others did not think there were issues people felt would generate a "hot" response from the City. Councilmember Barrett recalled an article he had read about the White House being asked about a sensitive prior event, and the response was a simple single sentence. He said that all Councilmembers might not agree on when to and what type of response was appropriate, which was all the more reason for a policy.

Councilmember Templeton said she felt Councilmember Forbus' response was measured and appropriate,

although she agreed with Councilmember Barrett about hot responses. She said the quote was in the paper from a credentialed officer, a Deputy Executive Director, and was issued from Austin, to which the public gives weight. She read samples from the City's release that she felt were very appropriate.

Councilmember Zender said she thought it was a thoughtful and measured response, first because the City did not respond for one week. She said she thought it was rare for the Communications Committee to respond. She agreed with Councilmember Barrett that perhaps the Council did need to fine-tune its policy. She thought the City should have responded more quickly and that it was unacceptable for such things [the May 5 story] to be published in the community's primary news source without some kind of response.

Councilmember Wagamon said he would like to support the Communications Committee, that the accusations were blatant, unsubstantiated, and inflammatory on the front page. He said he did blame the Item since they even had a policy about this on their opinion page. Councilmember Wagamon said he understood Councilmembers not wanting it to say the City of Huntsville, maybe, but that if there was something not true or accurate in the City's statement, they could discuss it and send out a correction.

Councilmember Woodward said he was repeating that his question was about whether a response was needed, nor what was said in the response, but when the response is made. He read from the Rules of Procedure "Members of the Council are expected to speak up and speak out regarding matters affecting the City. They are, however, also expected to take personal responsibility for their public comments, both oral and written. When making public comments, Council members shall make appropriate disclaimers when their comments do not reflect the views of other Council members and may be in conflict with the current City policy." Councilmember Woodward said the Communications Committee did not speak for him, nor did any Councilmember speak for any other. He said they were really talking about one phrase in the entire City release.

Councilmember Wagamon asked that if the issue were only that, why this specific press release precipitated this issue. He asked if Councilmember Woodward would disagree to anything in the release. Councilmember Woodward said he hoped no Councilmember would abrogate their vote to any other member or committee. Councilmember Wagamon said the Council trusts many Committees to work for them, and that if the Communications Committee had done something untrue, he could understand the Council's displeasure. However, Councilmember Wagamon said, if not, then no policy change was needed.

Councilmember Woodward said his other concern was that the comments in the Item and what had transpired seemed to him to potentially be a legal matter, and that the Council needed to be very careful in that situation. He said that if he had been asked about it, he would have probably consulted with the City Attorney.

Councilmember Ray said everything the Council did had a legal implication, and that the City hired the City Manager and the City Secretary to speak for the City, and that the Communications Committee only reviews press releases. Councilmember Ray said he thought the release from the Public Information Office was measured and actually soft, and that they do speak for the City of Huntsville. Councilmember Ray said the City should have a policy of rebuttal for "incredibly reckless statements." He said the Item did not seek statements from any individual Councilmembers or Chief of Police, but that he, Councilmember Ray, had consulted police officers.

Councilmember Forbus said all this was run by the legal department and that the City Attorney didn't have a problem with it. City Attorney Leonard Schneider said his role was to give advice, and Councilmembers could follow it or not. He said he was asked by Councilmember Woodward if he [Mr. Schneider] knew about the release, which he said he did, and that he said it implicates a Council action, but that there was nothing wrong with the content legally. Mr. Schneider said the Council sets the policy.

Councilmember Forbus said he had spoken with Mr. Schneider after the release, and then retracted it, and, finding out that cannot be done, retracted the retraction. Councilmember Forbus apologized and said that if could have removed "The City of Huntsville," he would have.

The Mayor brought discussion to a close.

f. City Manager's Report

The City Manager said he would like to refocus attention to James Archie, and encouraged the Council to attend Mr. Archie's retirement event at the Service Center on May 26 at 3pm.

The City Manager also acknowledged Deputy City Secretary Kristin Edwards, saying she was excellent at her job, and referring attention to the Huntsville ad in the first Governor's magazine on economic development.

1. Update on water wells.

The City Manager said Well #14 originally failed in March 2009 and about \$112,000 had been spent on it, but that it still had sand in it due to not being drilled correctly.

2. Update on relocation of TDCJ bat colony.

The City Manager said TDCJ and Texas Parks and Wildlife was working with the Audubon Society to build

new habitat for the bats, and that the City intended to cooperate.

The City Manager mentioned the Huntsville Independent School District's Disciplinary Alternative Education Program and that he was uncomfortable with it, had spoken with School Resource Officers, and thought the Councilmembers might take a look individually.

The City Manager said the fuel contamination at the library was severe and the City would have to remove the soil and prevent further contamination. He said it would increase the cost to the library project.

Councilmember Woodward thanked the Police Department for their assistance at the Texas Tourism Rally.

The City Manager said there had been a lot of banter about the Police Dept., and suggested that someone stop a Sergeant and speak to them directly.

Councilmember Forbus mentioned Nancy Franklin's article in the Item today about donations to the library.

10. PUBLIC COMMENT

There were no public comments.

11. MEDIA INQUIRIES

There were no media inquiries made.

12. ITEMS OF COMMUNITY INTEREST

(Hear announcements concerning items of community interest from the Mayor, Councilmembers, and City staff for which no action will be discussed or taken.)

Councilmember Templeton said the Bruce Brothers Huntsville Regional Airport dedication would be held on Friday, May 28th at 10am at the airport.

Councilmember Forbus again mentioned his statement about Nancy Franklin's article, and suggested citizens visit the Gift Shop at the Sam Houston Statue.

Carol Reed invited the Council to the Public Works Luncheon Wednesday, May 19, at 11am at the Service Center.

13. ADJOURNMENT

The meeting was adjourned at 8:11pm.

Lee Woodward, City Secretary

City Council Meeting Agenda Item

Item Title:

Ordinance amending traffic schedule

Date:

5/4/2010

Agenda Item No.:

6b

Requested By:

Aron Kulhavy, AICP, Public Works Director

Dept./Div:

700

Dept. Approval:

AK

Issue/Item Description:

Adoption of an ordinance amending the traffic schedule to ratify stop signs on Avenue O at the intersection of 21st Street.

Background:

Upon receiving a petition requesting traffic control on Avenue O, traffic counts and an engineering study were completed to review the current conditions. Upon completion of the study, stop signs were found to be warranted at the intersection of O and 21st because of sight distance issues.

The stop signs that were installed have improved the safety in this location by reducing the chance of conflict due to sight issues. As a secondary benefit, speeds along Avenue have been reduced.

Since the installation of the signs, additional traffic counts have been completed. At this time, the counts are being analyzed and further traffic control implements may be necessary to relieve any excessive traffic or speeding in the area.

Facts to Consider:

- Staff received petition for traffic control along Avenue O
- Traffic counts and a study were completed by engineering staff
- Concerns of sight distance were found at the intersection of Avenue O and 21st Streets warranting stop signs on Avenue O
- The signs have been in place for approximately 90 days and have had a positive impact on safety

Fiscal Impact/Funding Source(s):

none

Attachment(s):

- Ordinance
- Request petition
- Traffic Study

Recommendation(s):

- Approve the adoption of the ordinance to amend the traffic schedule.

MOTION: ☐

SECOND: ☐

VOTE:

☐ **PRESENTED**

☐ **APPROVED**

☐ **DECLINED ACTION**

☐ **TABLED**

☐ **OTHER**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, AMENDING CHAPTER 44, TRAFFIC AND MOTOR VEHICLES, OF ITS CODE OF ORDINANCES BY PLACING STOP SIGNS ON AVENUE O AT 21ST STREET; AND MAKING OTHER FINDINGS AND PROVISIONS RELATED THERETO; AND PROVIDING FOR THE PUBLICATION AND EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, THAT:

Section 1: The following described stop intersection shall be PLACED by the amendments shown below:

Intersection On
Avenue O

At
21st Street

Section 2: The City Manager is authorized and directed to cause the placement of proper signs along the above described streets.

Section 3: It shall be unlawful for driver of a vehicle to disobey the instruction of the signs placed in accordance with the provisions of this ordinance unless at the time otherwise directed by a Police Officer.

Section 4: Any person, firm or corporation violating any provision of this ordinance or failing to comply with any requirement of the ordinance will be guilty of a misdemeanor as provided by Article I, Section 44-4 of Chapter 44 of the Huntsville Code of Ordinances being punishable by a fine of not less than \$1.00 nor more than two hundred (\$200.00) dollars; except that minors who have passed their 14th birthday but have not reached their 17th birthday shall be punished by a fine of not more than \$100.00.

Section 5: If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect any of the remaining provisions of this ordinance.

Section 6: All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

Section 7: This ordinance shall take effect ten (10) days after its passage by the City Council. The City Secretary shall publish the caption of this ordinance in the official City newspaper at least twice within ten (10) days of its passage.

PASSED AND APPROVED THIS 1st DAY OF JUNE 2010.

THE CITY OF HUNTSVILLE

J. Turner, Mayor

ATTEST:

APPROVED AS TO FORM:

Lee Woodward, City Secretary

Leonard Schneider, City Attorney

TO THE HONORABLE CITY COUNCIL MEMBERS OF HUNTSVILLE, TEXAS:

WE, the law abiding, tax paying residents of Avenue O from 19th street to 22nd street, do hereby petition this governing body to grant us relief from the excessive amount of automobile traffic which presently traverses our peaceful residential neighborhood.

WE humbly request:

- 1) THAT the proposal to have parking limited to only the East side of Ave O from 19th street to 22nd street be not considered.
- 2) THAT a four way stop intersection be created at Ave O and 21st street.
- 3) THAT 3 speed tables be placed between 19th and 22nd street.
- 4) THAT two signs be placed -- one entering our residential neighborhood from 19th street, the other at the 22nd street entrance -- stating:

**RESIDENTIAL AREA
NO THRU TRAFFIC
←TAKE ALTERNATE ROUTES→**

WE, the below signed, therefore humbly request these actions be moved upon swiftly so that we, the residents of this residential neighborhood, may be granted relief from:

- 1) Excessive trash being thrown from passing vehicles;
- 2) Excessive noise from "loud" vehicles late at night;
- 3) The too often inability to back out of our own drives;
- 4) The speeding vehicles that too often exceed 30 m.p.h.;
- 5) The danger caused from the amount of vehicles which all too often run through the one set of stop signs we do have posted at the 20th street intersection;
- 6) The excessive traffic that threatens our young children and dogs who often play in their front yards;
- 7) The increasing amount of thefts that have occurred recently possibly due to more passersby driving through our peaceful residential neighborhood.
- 8) A more than likely devaluation of our property values.

WE, the undersigned, seek the Council's help in keeping our peaceful residential neighborhood just that---peaceful, quiet, and safe. As the only area within the city limits designated as a Historic Homestead area we humbly beseech you to limit the traffic through our neighborhood instead of increasing it so that our peaceful residential neighborhood may return to a quieter, more peaceful way of life.

WE, the undersigned, all seek the relief outlined in the letter on page 1 of this document regarding the stoppage of any action to limit parking on Ave O from 19th to 22nd street and further action to limit the flow of traffic through our residential neighborhood.

Printed Name	Signature	Address
JAKE FUGUA	<i>[Signature]</i>	2010 AVE O
Glenda Fugua	<i>[Signature]</i>	2010 AVE. O
CHRISTY FUGUA	<i>[Signature]</i>	2010 AVE. O
LEE GILLILAND	<i>[Signature]</i>	2006 AVE. O
Charles Gilliland	<i>[Signature]</i>	2006 AVE. O
Colleen Spencer	<i>[Signature]</i>	1522 20 th St; Corner of 20 th
CASEY SPENCER	<i>[Signature]</i>	1522 20 th
JEFF SPANLING	<i>[Signature]</i>	1911 AVE O
Shana Spaulding	<i>[Signature]</i>	1911 AVE O
Eloise Powell	<i>[Signature]</i>	1909 AVE. O
Bonnie Sanders	<i>[Signature]</i>	1421 19 th St
DANA L.D. SMITH	<i>[Signature]</i>	1914 AVE. O (V1+2)
John Western McCoy	<i>[Signature]</i>	2012 AVE O
Diane McCoy	<i>[Signature]</i>	2012 AVE. O
Lesley McCoy	<i>[Signature]</i>	2012 Avenue O
Jennifer Johnston	<i>[Signature]</i>	2020 Ave. O
CHARLES WALKER	<i>[Signature]</i>	2020 Ave. O
Anthony C. Zernick	<i>[Signature]</i>	2013 Ave O
MIYOKO LAVELLE	<i>[Signature]</i>	2013 AVE O
Gillian Gammara	<i>[Signature]</i>	2015 Ave O
Robert Vann	<i>[Signature]</i>	2108 AVE O (1+2 only)
Sharon Vann	<i>[Signature]</i>	2108 Ave O (1+2 only)
Amanda Nowlin-O'Bannon	<i>[Signature]</i>	2028 Ave. O (2 only)
MATT HENKE	<i>[Signature]</i>	2011 AVE. O
Sherry Henke	<i>[Signature]</i>	2011 Ave O



MEMORANDUM

TO: Aron Kulhavy, Planning Director
FROM: David Smith, P.E., Interim City Engineer
DATE: December 8, 2009
SUBJECT: Avenue O – Traffic Study for Stop Signs
between 19th Street and 22nd Street

As requested, an analysis has been performed regarding the need for stop signs on Avenue O between 19th Street and 22nd Street. The initiating citizen petition and a location map are attached.

The citizen request for a 4-way stop at Avenue O and 21st Street will be addressed first. In accordance with the TxDOT Manual on Uniform Traffic Control Devices (MUTCD), the following information is required to determine if stop signs are warranted at intersections:

1. Vehicular accident reports.
2. Traffic and pedestrian volumes, average daily volumes and peak hour volumes.
3. Traffic speeds, including the 85th percentile speeds approaching each intersection.
4. Adequacy of driver sight distances.

VEHICULAR ACCIDENTS

The MUTCD requires:

1. A minimum of 5 accidents in a 12-month period that are susceptible to correction by a multiway stop installation. Such accidents include right- and left-turn collisions as well as right-angle collisions.

Of a total of five (5) HPD accident reports for the last two years, none were due to excessive speed or correctable by additional stop signage. Therefore, stop signs are not warranted for this criterion on Avenue O at these locations.

TRAFFIC VOLUMES

The MUTCD requires:

2. The vehicular volume entering the intersection from the major street approaches (total of both approaches) averages at least 300 vehicles per hour for any 8 hours of an average day, and
3. The combined vehicular volume entering the intersection from the minor street approaches (total of both approaches) averages at least 200 vehicles per hour for the same 8 hours, with an average delay to minor-street traffic of at least 30 seconds per vehicle during the highest hour, but
4. If the 85th percentile approach speed of the major-street traffic exceeds 45 mph, the minimum vehicular warrants are 70% of the above values.
5. Where no single criterion is satisfied, but where Criteria 1, 2 and 3 are all satisfied to 80% of the minimum values, Criterion 4 is excluded from this condition.

Six (6) traffic counters were used in this study over a one (1) week period and traffic counts at the subject locations show:

Address Block	Direction	Counter ID	ADT Vol.	Highest Hourly Vol.	Vehicles/Hr-8 Hr Period
1900	N'bd	9163	566	59	47
	S'bd	9191	753	102	76
2000	N'bd	9155	677	74	52
	S'bd	9157	328	58	37
2100	N'bd	9166	560	64	47
	S'bd	9190	676	84	66

Address Block	Criteria 2 Met?	Criteria 3 Met?	Criteria 4 Met?
1900	No(161)	N/A	N/A
2000	No(89)	N/A	N/A
2100	No(113)	N/A	N/A

TRAFFIC SPEEDS

Traffic speeds on Avenue O were recorded and are summarized here:

Address Block	Direction	Counter ID	85 th Percentile Speed
1900	N'bd	9163	34.1
	S'bd	9191	29.6
2000	N'bd	9155	37.9
	S'bd	9157	35.3
2100	N'bd	9166	32.8
	S'bd	9190	34.7

The posted speed limit on Avenue O is 30 mph and the 85th percentile speed averaged approximately 34 mph which supports the existing speed limit. There does not appear to be a problem with excessive speed on these three (3) blocks of Avenue O.

While the 85th percentile speed on Avenue O is higher than the posted speed, the MUTCD recommends against using stop signs for speed control. Therefore the speed warrant for these locations is not met.

SIGHT DISTANCE

The sight distances for drivers stopped at Avenue O on 21st Street are not adequate for the posted speed of 30 mph. Trees and shrubs partially obscure the view from vehicles stopped on 21st Street. Therefore, stop sign warrants for sight distances are met. See table below and photos attached.

Intersecting Street	View Direction	Required Sight Distance	Existing Sight Distance
21 st St	North	200'	150'+/-
	South	200'	150'+/-

SUMMARY

The stop sign warrant for sight distance is met on Avenue O at 21st Street; therefore the installation of stop signs at 21st Street is warranted.

P16

As an additional safety consideration, “No Parking Anytime” signs could be installed on Avenue O for 200 feet each direction from 19th, 20th, 21st and 22nd Streets. This would keep the required sight distances clear of parked vehicles.

An investigation into the citizen request for speed tables and neighborhood signage will follow in the near future.

City Council Meeting Agenda Item

Item Title:

Ordinance amending traffic schedule

Date:

6/1/2010

Agenda Item No.:

bc

Requested By:

Aron Kulhavy, AICP, Public Works Director

Dept./Div:

700

Dept. Approval:

AK

Issue/Item Description:

Adoption of an ordinance amending the traffic schedule to ratify no parking signs on the north side of 1st Street between MLK and Bernice.

Background:

Staff received a call concerning the number of cars parked along 1st Street east of MLK on both sides of the road. The concerns were in regards to the narrow street width and the potential for emergency vehicles to have problems accessing the street with vehicles parked on both sides.

Upon receiving the request, staff conducted site visits and recommended placing no parking signs on the north side due to the fewer number of lots and the provision of off-street parking on that side of the street. The signs were placed under the authorization of the City Manager.

Facts to Consider:

- Staff received concern for emergency vehicle access on 1st Street
- 1st Street is narrow and provided for parking on both sides of the street
- No parking signs were placed on the north side of the street to alleviate access concerns
- The signs have been in place for approximately 90 days and have had a positive impact on safety

Fiscal Impact/Funding Source(s):

none

Attachment(s):

- Ordinance
- Map

Recommendation(s):

- Approve the adoption of the ordinance to amend the traffic schedule.

MOTION: ☐SECOND: ☐

VOTE:

- ☐ PRESENTED
- ☐ APPROVED
- ☐ DECLINED ACTION
- ☐ TABLED
- ☐ OTHER

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, AMENDING CHAPTER 44, TRAFFIC AND MOTOR VEHICLES, OF ITS CODE OF ORDINANCES BY PLACING NO PARKING SIGNS ON 1ST STREET BETWEEN MARTIN LUTHER KING AVENUE AND BERNICE STREETS; AND MAKING OTHER FINDINGS AND PROVISIONS RELATED THERETO; AND PROVIDING FOR THE PUBLICATION AND EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, THAT:

Section 1: The following described no parking zone shall be ratified by the amendments shown below:

Street
1st Street

Between
MLK and Bernice

Section 2: The City Manager is authorized and directed to cause the placement of proper signs along the above described streets.

Section 3: It shall be unlawful for driver of a vehicle to disobey the instruction of the signs placed in accordance with the provisions of this ordinance unless at the time otherwise directed by a Police Officer.

Section 4: Any person, firm or corporation violating any provision of this ordinance or failing to comply with any requirement of the ordinance will be guilty of a misdemeanor as provided by Article I, Section 44-4 of Chapter 44 of the Huntsville Code of Ordinances being punishable by a fine of not less than \$1.00 nor more than two hundred (\$200.00) dollars; except that minors who have passed their 14th birthday but have not reached their 17th birthday shall be punished by a fine of not more than \$100.00.

Section 5: If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect any of the remaining provisions of this ordinance.

Section 6: All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

Section 7: This ordinance shall take effect ten (10) days after its passage by the City Council. The City Secretary shall publish the caption of this ordinance in the official City newspaper at least twice within ten (10) days of its passage.

PASSED AND APPROVED THIS 1st DAY OF JUNE 2010.

THE CITY OF HUNTSVILLE

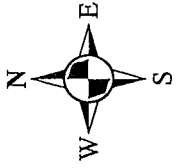
J. Turner, Mayor

ATTEST:

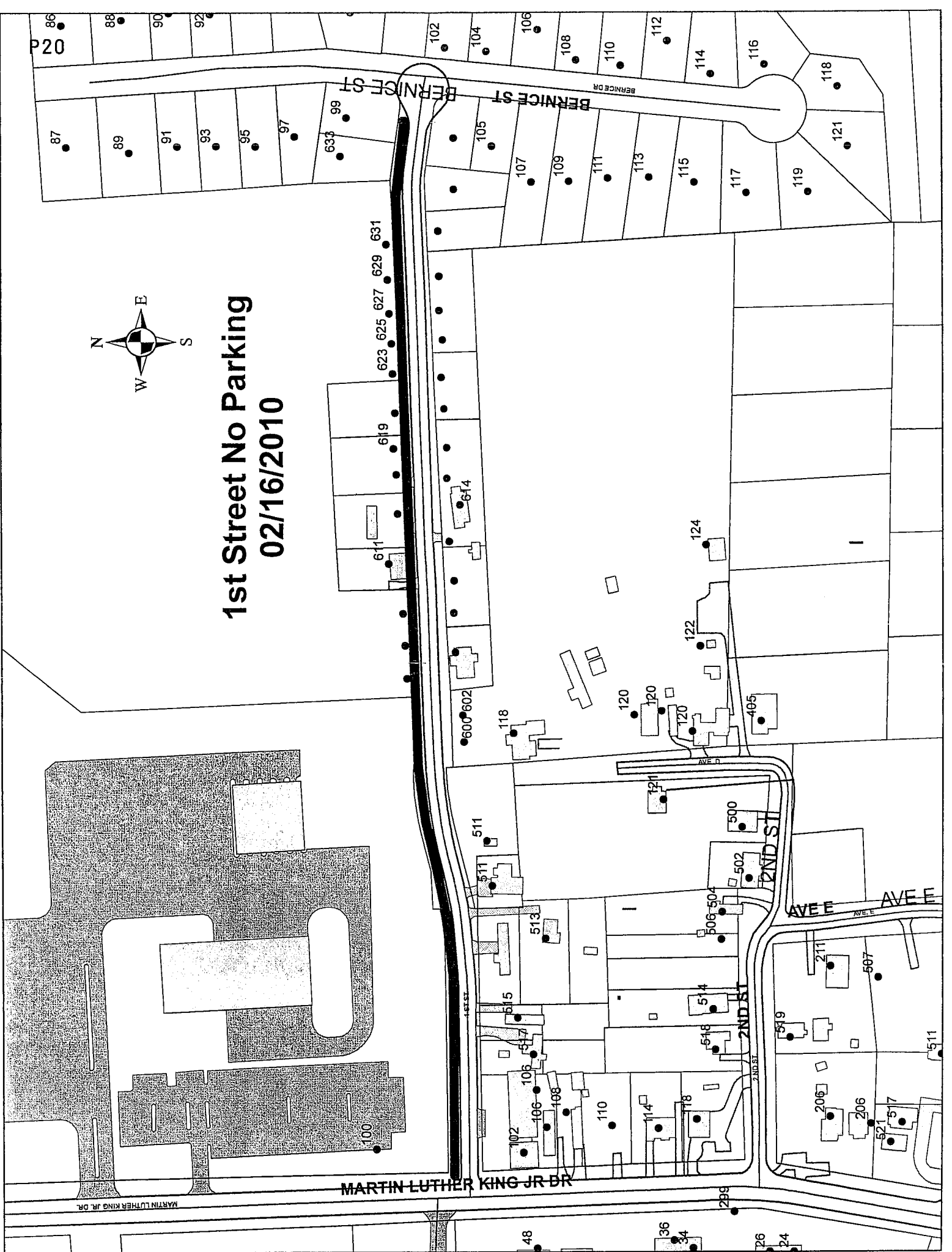
Lee Woodward, City Secretary

APPROVED:

Leonard Schneider, City Attorney



1st Street No Parking 02/16/2010



City Council Meeting Agenda Item

Item Title:

Code of Ordinances, Section 24-1

Date:

5/18/2010

Agenda Item No.:

6d

Requested By:

Aron L. Kulhavy, AICP Public Works Director/City Planner

Dept./Div:

716

Dept. Approval:

AK

Issue/Item Description:

Adoption of an ordinance amending Section 24-1 of the Code of Ordinances to adopt by reference any amendments to the Development Code.

Background:

In the Code of Ordinances, Section 24, Land Development, Section 24-1 Regulations Adopted adopts the City's Development Code; however, the City Attorney advised staff that it does not make reference to adopting any of the amendments made to the Development Code.

Public hearing notification was published in the *Huntsville Item* on April 18, 2010 for both the P&Z and City Council meetings.

On May 6, 2010, the Planning and Zoning Commission held a public hearing and unanimously recommended wording to allow for any amendments to the Development Code to be adopted by reference.

On May 18, 2010, City Council is to hold a public hearing and a first reading of this proposed amendment.

Facts to Consider:

- The City of Huntsville Code of Ordinances adopts the Development Code by reference
- The Code of Ordinances does not mention the adoption of amendments to the Development Code
- Upon consultation with the City Attorney, it was recommended that the change be made to clarify that amendments to the Development Code are addressed in the Code of Ordinances.

Fiscal Impact/Funding Source(s):

None

Attachment(s):

- Planning and Zoning Commission Discussion Form
- Ordinance

Recommendation(s):

- Presentation, discussion and possible action to approve Ordinance 2010-31 on the proposed amendment to Section 24-1 Regulations Adopted of the Code of Ordinances.

MOTION: ☐

SECOND: ☐

VOTE:

☐ **PRESENTED**

☐ **APPROVED**

☐ **DECLINED ACTION**

☐ **TABLED**

☐ **OTHER**



PLANNING AND ZONING COMMISSION AGENDA ITEM DISCUSSION FORM

Prepared by: Rose Kader, Planner Aron Kulhavy, AICP, Public Works Director/City Planner

SUBJECT: Code of Ordinances, Section 24-1. Regulations adopted.

MEETING DATE: May 6, 2010

TYPE OF REVIEW: Public Hearing, Administrative

APPLICANT: City of Huntsville

FACTS, CODE REQUIREMENTS AND CONDITIONS

The City Attorney advised staff that *Section 24-1. Regulations adopted* in the City of Huntsville *Code of Ordinances* does not adopt any amendments to the *Development Code*. Therefore, wording has been proposed (underlined) to allow for the automatic adoption of amendments.

Sec. 24-1. Regulations adopted.

The land development regulations and any amendments thereto of the city are hereby adopted by reference and incorporated as if fully set forth herein. A copy of the development code is on file with the office of the city secretary, city engineer and city planner.

This item, once acted upon, will be referred to City Council for a public hearing and final vote. Anticipated City Council date is May 18, 2010.

STAFF RECOMMENDATION:

Staff recommends approval of the proposed amendment to Section 24-1. Regulations adopted.

ATTACHMENTS:

None

ORDINANCE NO. 2010-31

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, AMENDING CHAPTER 24, LAND DEVELOPMENT, OF ITS CODE OF ORDINANCES; AND MAKING OTHER FINDINGS AND PROVISIONS RELATED THERETO; AND PROVIDING FOR THE PUBLICATION AND EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, THAT:

Section 1: Section 24-1, Regulations Adopted, of Chapter 24, Land Development is hereby amended and shall be as follows:

“Sec. 24-1. Regulations adopted.

The land development regulations and any amendments thereto of the city are hereby adopted by reference and incorporated as if fully set forth herein. A copy of the development code is on file with the office of the city secretary, city engineer and city planner.”

Section 2: If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect any of the remaining provisions of this ordinance.

Section 3: All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

Section 4: Notice of the agenda for this meeting, was given in accordance with law by posting the same at the place reserved and designated for notices of public meetings and public activities and prior to the adoption of this ordinance.

Section 5: This ordinance shall take effect ten (10) days after its passage by the City Council. The City Secretary shall publish the caption of this ordinance in the official City newspaper at least twice within ten (10) days of its passage.

First Reading Date: May 18, 2010

PASSED AND APPROVED on the Second Reading on this the 1st day of June 2010.

THE CITY OF HUNTSVILLE

J. Turner, Mayor

ATTEST:

APPROVED AS TO FORM:

Lee Woodward, City Secretary

Leonard Schneider, City Attorney

City Council Meeting Agenda Item

Item Title:

Tap Fee Waiver

Date:

6/1/2010

Agenda Item No.:

6F

Requested By:

Dan Phillips

Dept./Div:

700

Dept. Approval:

AK

Issue/Item Description:

Request for a waiver of tap fees for three lots on Avenue H for the development of affordable housing by the Christian Community Construction Team.

Background:

In the fall of 2008, the Community Construction Team was the successful bidder for three lots on Avenue H. At the council meeting in which the bid was approved, Phillips requested that the fees for water and sewer taps be waived. The Council agreed in principle with this request; however, Phillips was instructed by the City Manager at the time to wait until the houses were ready to be constructed. It was indicated to Phillips on several occasions that the City could support waiving of the tap fees at the time of development.

Currently, the first building permit has been issued on the property and Phillips is intending on continuing with the other two this summer. As the projects are underway, or close to commencing, formal approval by the Council to waive tap fees is necessary at this time.

Facts to Consider:

- The lots were sold to Christian Community Construction Team in 2008
- Tap fees for similar construction were waived in the area for low-income housing previously
- Phillips has received support for this request from previous City Managers
- Support for the development of quality affordable housing
- Lots are in the Neighborhood Conservation zoning district

Fiscal Impact/Funding Source(s):

Approximately \$2000 in lost revenue for water taps and \$2500 in lost revenue for sewer taps.

Attachment(s):

- request from Dan Phillips
- Vicinity Map

Recommendation(s):

- Approve the fee waiver in accordance with previous informal agreements.

MOTION: ☐

SECOND: ☐

VOTE:

☐ **PRESENTED**

☐ **APPROVED**

☐ **DECLINED ACTION**

☐ **TABLED**

☐ **OTHER**

Aron Kulhavy

From: Dan and Marsha Phillips [marshajp@att.net]
Sent: Thursday, May 13, 2010 7:20 AM
To: Aron Kulhavy
Subject: Tap fees

Dear Aron,

In the Fall of 2008 the Christian Community Construction Team was the successful bidder for three lots on Avenue H. At the council meeting where the bid was approved, I requested that the city waive tap fees for the three lots, in line with a previous project accross the street for low-income families. That project was conducted by the Sustainable Builders Guild of Huntsville. At the time city manager Kevin Evans said he would have no problem with such a request, but to wait until the houses were ready to be built. The council agreed.

The actual closing on the property occurred in the Spring of 2008, conducted by interim city manager, Gene Pipes. Mr. Pipes also said at the time that he could support waiving of tap fees for these little families.

Recently our current city manager Bill Baine has also said he could support waiving of tap fees.

We have had a four-year window to begin construction, and indeed, we are now underway with the first building permit already pulled, and two more to follow this summer.

I am hoping that you might be able to streamline the waiving of tap fees for these little families.

Thank you.

Sincerely,

Dan Phillips

P28

9TH ST

9TH ST

AVE H

10TH ST

10TH ST

*NOTE: Base data are not used to create this representation. The accuracy of this representation is based on the data provided by the applicant. The applicant is responsible for the accuracy of the data provided. The applicant is responsible for the accuracy of the data provided. The applicant is responsible for the accuracy of the data provided.



1 inch = 50 feet

Tap Fee Waiver
Oakwood View Subdivision
Section 2, Lots 1-3

City Council Meeting Agenda Item

Item Title:	Date:	Agenda Item No.:
Construction of Low Income Housing	6/1/2010	69
Requested By:	Dept./Div:	Dept. Approval:
Sherry McKibben		WD

Issue/Item Description:

Construction of approximately six (6) low income homes at various locations within the city limits of Huntsville, TX.

Background:

The City of Huntsville received a grant through the Texas Department of Housing and Community Affairs, TDHC, Home Program. A sealed Request for Proposal was conducted in accordance with Local Government Code, City of Huntsville Purchasing Policy and TDHC requirements

Facts to Consider:

- Recommended vendor solicited 22 local sub-contractors;
- Recommended vendor solicited 15 HUB and WBE sub-contractors;
- Recommended vendor using Energy Star Diamond and green construction methods and appliances;
- Recommended vendor purchasing approximately 80% to 90% of the construction materials and appliances from vendors located within the city limits of Huntsville;
- Construction completion time line approximately 90 days from date of purchase order;
- Prospective homeowners have been approved for the homes meeting the guidelines of the grant;
- Meeting to be held between each homeowner, City of Huntsville representative and the recommended vendor for complete understanding of program;
- City crews to complete demolition of existing structures, waive permits and other City Fees to meet in-kind services allowed in the grant;
- Recommended vendor to bring useable unused construction materials to the City of Huntsville Trash Into Plow Shares (TIPS) Warehouse;
- Should project come under budget additional homes may be constructed utilizing unused grant funds;
- Three 3 bedroom 2 bath homes and three 2 bedroom, 2 bath homes are scheduled for construction;
- Request for Proposal was advertised on Bid Sync, Electronic State Business Daily, in The Huntsville Item, The City of Huntsville web site, Facebook and Tweeter;
- 97 vendors sent solicitation, 10 vendors responded to solicitation.

Fiscal Impact/Funding Source(s):

620-1620-93170 Total TDHC Grant Funds Awarded
 \$432,000 TDHC Homes
 \$ 21,000 City Match
 \$ 42,516 In-Kind Services
 \$ 17,280 Administrative Costs
 \$512,796 Total Grant

Estimated construction cost for six homes:

\$235,044 Three 3 bedroom homes
\$195,867 Three 2 bedroom homes
\$430,911 Total 6 homes

City Match: requires \$21,000 cash match for grant funds

In-Kind Services: \$42,516 as calculated by the grant administrator and earmarked in the grant application.

Administrative Costs: \$17,280 as calculated by the grant administrator and earmarked in the grant application.

Estimated Completion Cost
\$430,911 Construction
\$ 21,000 City Match
\$ 42,516 In-Kind Services
\$ 17,280 Administrative Costs
\$511,707 Total Estimated Cost

Attachment(s):

- Scoring Criteria
- Home Plans

Recommendation(s):

- Authorize City Manager to approve Schenck Builders LLC, Conroe-Texas to construct low income housing with TDHC grant funds with City matching requirements.

MOTION: ☐

SECOND: ☐

VOTE:

☐ **PRESENTED**

☐ **APPROVED**

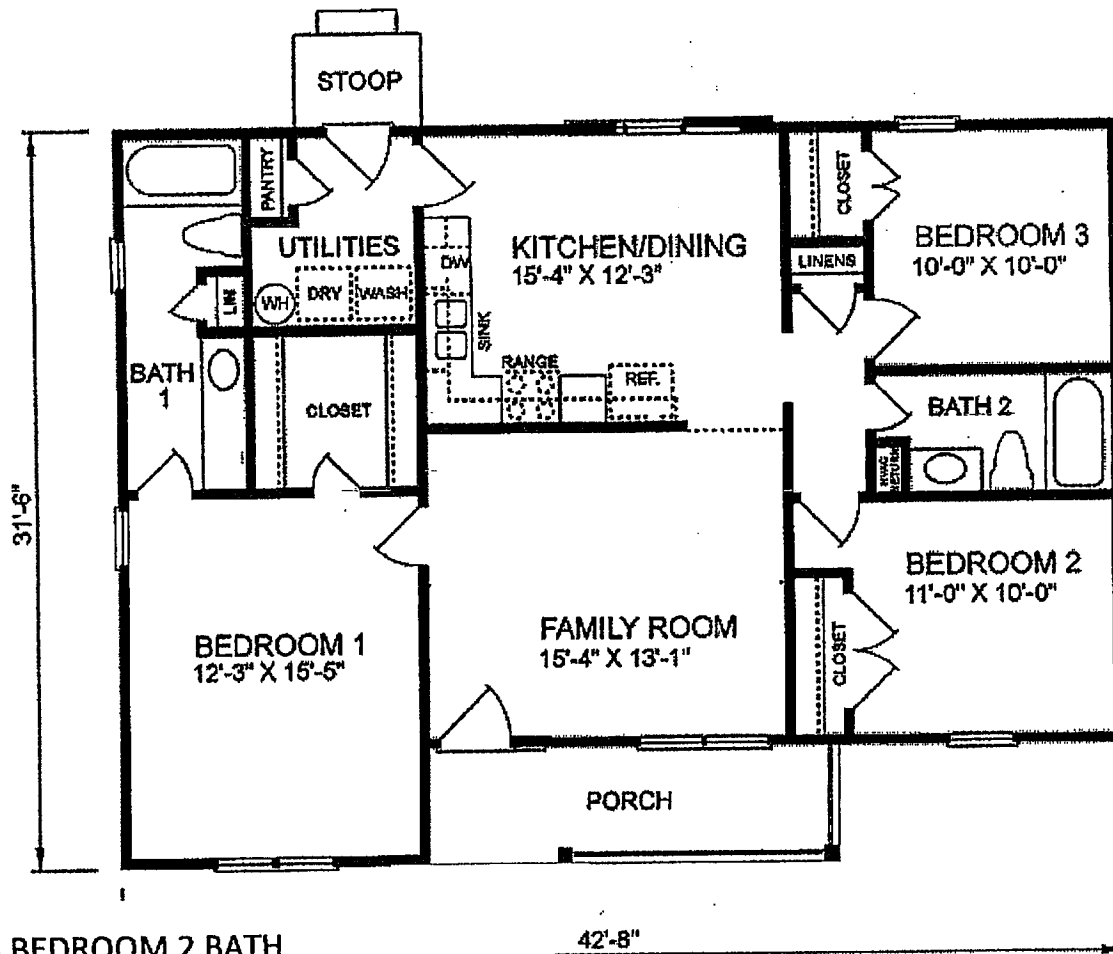
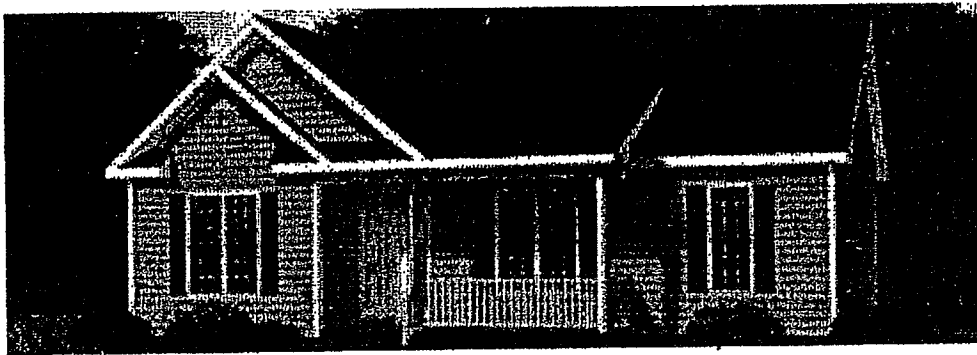
☐ **DECLINED ACTION**

☐ **TABLED**

☐ **OTHER**

Best Value - 40 Points	Cantera	Pilgrim	Schenck	Davis Const.	Tri Point	Job Dist.	Legacy	ABC	Woodway	Ratcliff
Evaluator #1	30	23	36	28	25	27	26	20	24	22
Evaluator #2	33	26	36	33	26	30	28	24	30	28
Evaluator #3	35	28	36	27	27	33	29	23	26	30
Evaluator #4	36	24	35	29	28	30	27	19	27	31
Use of HUBS, WBE, & Locals - 15 Points										
Evaluator #1	8	0	5	5	5	2	12	12	8	2
Evaluator #2	4	7	5	12	3	2	12	5	11	2
Evaluator #3	9	0	15	12	7	7	12	11	8	5
Evaluator #4	4	0	12	7	6	3	9	9	4	3
Deliverable Time Table - 15 Points										
Evaluator #1	15	11	8	5	8	8	7	12	13	12
Evaluator #2	15	10	8	10	8	5	7	12	13	11
Evaluator #3	15	5	13	7	8	10	7	12	10	7
Evaluator #4	15	5	15	7	10	5	7	12	10	7
Environmental Conservation Methods and Materials - 15 Points										
Evaluator #1	11	0	12	13	3	11	8	0	3	7
Evaluator #2	10	3	14	15	11	13	9	9	14	8
Evaluator #3	13	0	15	3	0	8	13	6	11	15
Evaluator #4	11	0	15	3	2	11	11	0	3	15
Experience and References - 10 Points										
Evaluator #1	7	9	6	5	4	2	10	6	6	7
Evaluator #2	7	0	9	9	6	5	10	9	7	7
Evaluator #3	7	0	5	5	6	6	2	6	2	8
Evaluator #4	3.5	0	5	3	4	2.5	3	6	0	8
Proposal Completeness - 5 Points										
Evaluator #1	5	2	2	2	2	2	5	2	5	4
Evaluator #2	5	2	5	5	5	2	5	5	5	4
Evaluator #3	2	2	4	2	4	2	2	2	2	5
Evaluator #4	3	2	5	2	3.5	2	3	3	2.5	5
Ranking By Evaluator										
Evaluator #1	76	45	69	58	47	52	68	52	59	54
Evaluator #2	74	48	77	84	59	57	71	64	80	60
Evaluator #3	81	35	88	56	52	66	65	60	59	70
Evaluator #4	72.5	31	87	51	53.5	53.5	60	49	46.5	69
Total All Evaluators	303.5	159	321	249	211.5	228.5	264	225	244.5	253

Plan 1196

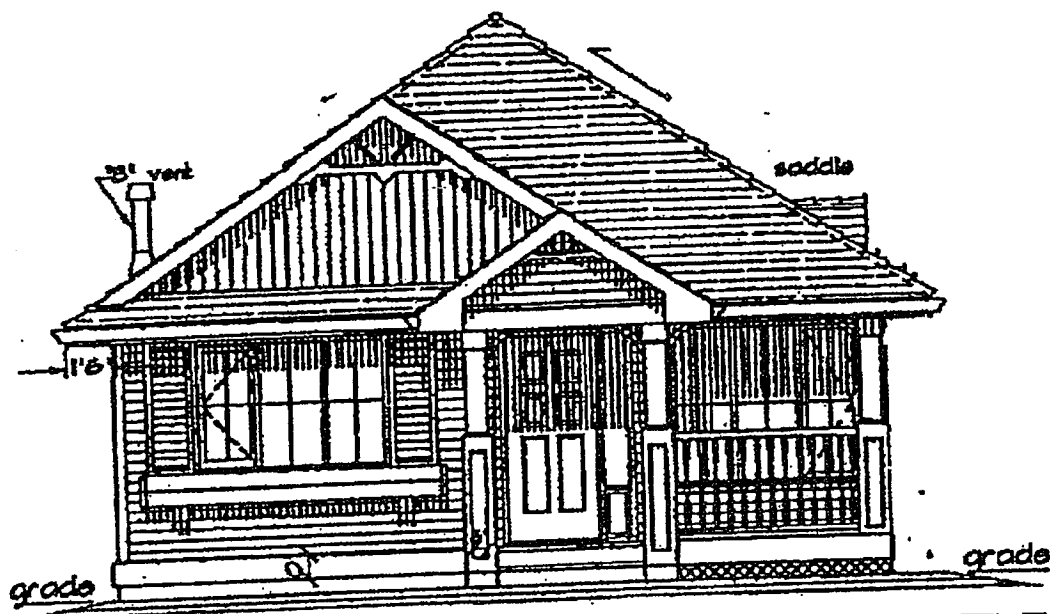


3 BEDROOM 2 BATH

1,196 SQUARE FEET

\$75,348 BASE PRICE PLUS

\$1,000 UPGRADE IN FLOORING
AND ROOFINGADDITIONAL COST DEPENDING ON
DIRT WORK AND CONCRETE DUE TO
GRADE OF PARTICULAR ADDRESSES



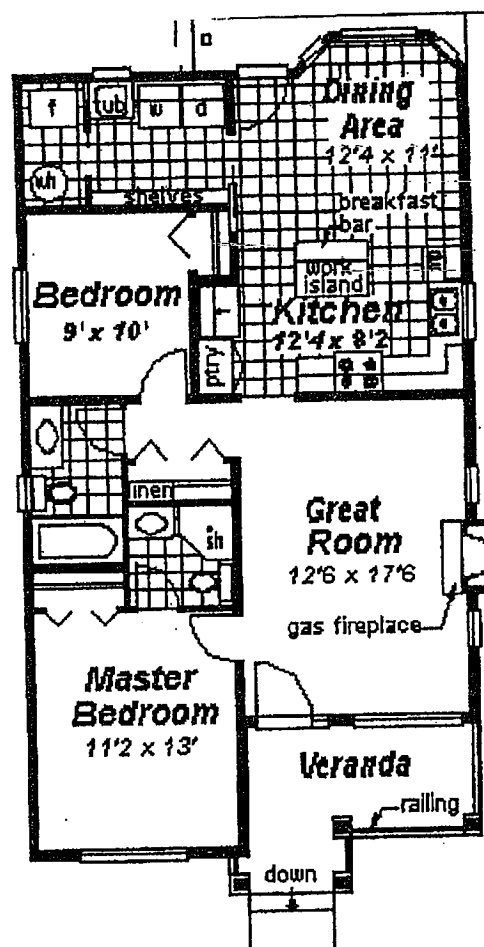
2 BEDROOM 2 BATH

1,000 SQUARE FEET

\$62,289 BASE PRICE PLUS

\$1,000 UPGRADE IN FLOORING
AND ROOFING

ADDITIONAL COST DEPENDING ON
DIRT WORK AND CONCRETE DUE TO
GRADE OF PARTICULAR ADDRESSES



City Council Meeting Agenda Item

Item Title:

Automated Recycling Carts

Date:

6/1/2010

Agenda Item No.:

6h

Requested By:

Sherry McKibben

Dept./Div:

320

Dept. Approval:

CR

Issue/Item Description:

This grant will be used for the purchase of 900 automated carts for expanding the curbside recycling.

Background:

The current pilot recycling project began in early Jan. 2010 and has steadily increased the participation rate and recyclable tonnage. The pilot recycling program has been very successful in the last 5 month and the goal is to expand the program into a second area. The Houston-Galveston Area Council has funding available for recycling.

Facts to Consider:

- Request not more than \$75,000.00
- No Match Requirement
- 96 Gallon Carts

Fiscal Impact/Funding Source(s):

N/A

Attachment(s):

- none

Recommendation(s):

- Authorize the City Manager to apply for, accept if awarded, and implement the H-GAC Solid Waste Management grant for Recycling Carts.

MOTION: ☐SECOND: ☐

VOTE:

☐ PRESENTED☐ APPROVED☐ DECLINED ACTION☐ TABLED☐ OTHER

City Council Meeting Agenda Item

Item Title:

Recycling Center Improvements

Date:

6/1/2010

Agenda Item No.:

61

Requested By:

Sherry McKibben

Dept./Div:

320

Dept. Approval:

CR

Issue/Item Description:

This grant will be used for the expansion of the Recycling Center.

Background:

The current recycling center is anticipating some slight problems accommodate the expanded amount of recyclables once additional areas of the city are added to the current pilot area. This grant will allow for the expansion of the existing center to 50'X120' and add an addition onto the driveway for large trucks.

The current pilot recycling project began in early Jan. 2010 and has steadily increased the participation rate and recyclable tonnage. With plans to expand the program, a larger facility will be need to house and contain the recyclables.

Facts to Consider:

- Request not more than \$350,000
- No Match Requirement

Fiscal Impact/Funding Source(s):

N/A

Attachment(s):

- none

Recommendation(s):

- Authorize the City Manager to apply for, accept if awarded, and implement the H-GAC Solid Waste Management grant for Recycling Center Improvements.

MOTION: ☐SECOND: ☐

VOTE:

☐ PRESENTED☐ APPROVED☐ DECLINED ACTION☐ TABLED

City Council Meeting Agenda Item

Item Title: 2010 JAG Grant	Date: 6/1/2010	Agenda Item No.: 63
Requested By: Sherry McKibben	Dept./Div: 551	Dept. Approval: KL

Issue/Item Description:

Approval for application and acceptance of 2010 Edward Byrne Justice Assistance Grant (JAG).

Background:

The JAG, formerly the Local Law Enforcement Block Grant, has been available for a number of years for law enforcement agencies. Huntsville and Walker County have received awards for several years, although the award amounts have diminished, we received \$17610.00 in 2009.

Facts to Consider:

- Award of \$18,067 jointly to Walker County and the City of Huntsville with the amount to be divided equally between the entities
- No local match
- The City will handle the grant application and reporting for the 2010 JAG (entities rotate this responsibility)
- Police department plans to spend these funds to acquire crime scene equipment.

Fiscal Impact/Funding Source(s):

\$9,033.50 of revenue from 2010 JAG Recovery through USDOJ

Attachment(s):

- Interlocal Agreement between Walker County and City of Huntsville
- Resolution 2010-27

Recommendation(s):

- Approve Resolution 2010-27 and authorize the City Manager to apply for, accept upon award, implement, and execute Interlocal Agreement with Walker County for the 2010 Edward Byrne Justice Assistance Grant (JAG).

MOTION: ☐

SECOND: ☐

VOTE:

☐ PRESENTED

☐ APPROVED

☐ DECLINED ACTION

THE STATE OF TEXAS
COUNTY OF WALKER

KNOW ALL BY THESE PRESENT

**INTERLOCAL AGREEMENT
BETWEEN THE COUNTY OF WALKER AND CITY OF HUNTSVILLE**

2010 JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD

This Agreement is made and entered into this 1st day of June, 2010, by and between The COUNTY of WALKER, acting by and through its governing body, the Commissioners Court, hereinafter referred to as COUNTY, and the CITY of HUNTSVILLE acting by and through its governing body, the City Council, hereinafter referred to as CITY, both of WALKER County, State of TEXAS, witnesseth:

WHEREAS, this Agreement is made under the authority of Chapter 791, Texas Interlocal Cooperation Act (Texas Government Code): and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party: and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement: and

WHEREAS, the Edward Byrne Memorial Justice Assistance Grant (JAG) Formula Program has, in a disparate allocation, awarded \$18,067 to the County and the City: and

WHEREAS, the CITY and COUNTY believe it to be in their best interests to reallocate the JAG funds.

NOW THEREFORE, the COUNTY and CITY agree as follows:

Section 1.

CITY agrees to act as applicant / fiscal agent of the grant and pay COUNTY a total of \$9,033.50 of JAG funds.

Section 2.

COUNTY agrees to use \$9,033.50 for the 2010 JAG Program until 09/30/2013.

Section 3.

Nothing in the performance of this Agreement shall impose any liability for claims against COUNTY other than claims for which liability may be imposed by the TEXAS Tort Claims Act.

Section 4.

Nothing in the performance of this Agreement shall impose any liability for claims against CITY other than claims for which liability may be imposed by the TEXAS Tort Claims Act.

Section 5.

Each party to this agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

Section 6.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 7.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

CITY OF HUNTSVILLE

COUNTY OF WALKER

City Manager

County Judge

ATTEST:

APPROVED AS TO FORM:

City Secretary

Assistant District Attorney

APPROVED AS TO FORM:

Contract Authorization

City Attorney

*By law, the District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contracts or legal document on behalf of other parties. Our view of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval and should seek review and approval by their own respective attorney(s).

RESOLUTION NO. 2010-27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTSVILLE, TEXAS, AUTHORIZING THE SUBMISSION OF THE 2010 EDWARD BYRNE JUSTICE ASSISTANCE FORMULA GRANT (JAG) TO THE DEPARTMENT OF JUSTICE FOR CRIME SCENE EQUIPMENT; AND AUTHORIZING THE CITY MANAGER TO ACT AS THE CITY'S EXECUTIVE OFFICER AND AUTHORIZED REPRESENTATIVE IN ALL MATTERS PERTAINING TO THE CITY'S PARTICIPATION IN THE 2010 JAG .

WHEREAS The City desires to ensure the safety of all its citizens and; The City of Huntsville requires the Police be charged with this task; and

WHEREAS It is necessary and in the best interest of the City to apply for funding under the 2010 Justice Assistance Grant (JAG).

NOW, THEREFORE, be it resolved by the City Council of the City of Huntsville, Texas, that:

SECTION 1: A Justice Assistance Grant (JAG) application is hereby authorized to be filed on behalf of the City and be placed in competition for funding to the Department of Justice.

SECTION 2: The application will be for \$18,067.00 to furnish crime scene equipment for the Huntsville Police Department.

SECTION 3: The funds will be redistributed with the City receiving \$9,033.50 and Walker County receiving \$9,033.50.

SECTION 4: The Mayor and City Council strongly support this application to address the safety needs of the Community.

SECTION 5: The City Council directs and designates the City Manager, Bill Baine, as the City's Chief Executive Officer and Authorized Representative to act in all matters in connection with this application and the City's participation in the Hazard Mitigation Grant Program.

PASSED AND APPROVED this 1st day of June, 2010.

THE CITY OF HUNTSVILLE

J. Turner, Mayor

ATTEST:

Lee Woodward, City Secretary

APPROVED AS TO FORM:

Leonard Schneider, City Attorney

City Council Meeting Agenda Item

Item Title:

Bullet Proof Vests

Date:

6/1/2010

Agenda Item No.:

60k

Requested By:

Sherry McKibben

Dept./Div:

551

Dept. Approval:

KL

Issue/Item Description:

This grant will be used to purchase replacement bullet proof vests for the police officers.

Background:

Every two years the U.S. Department of Justice, Office of Justice Programs offers to pay 50% of the costs associated with purchasing new bullet proof vests for police officers. Vests are on a 5 year rotational schedule because the warranty is only good for 5 years.

Facts to Consider:

- Request will be for not more than \$15,000
- 50% match requirement

Fiscal Impact/Funding Source(s):

Match funds will be from the police clothing account.

Attachment(s):

- none

Recommendation(s):

- Authorize the City Manager apply for, accept if awarded, and implement the Office of Justice Bullet Proof Vest Grant.

MOTION: ☐SECOND: ☐

VOTE:

☐ PRESENTED☐ APPROVED☐ DECLINED ACTION☐ TABLED☐ OTHER

City Council Meeting Agenda Item

Item Title:

Emergency Response Radios and Pagers

Date:

6/1/2010

Agenda Item No.:

61

Requested By:

Sherry McKibben

Dept./Div:

552

Dept. Approval:

TG

Issue/Item Description:

This grant will be used for the purchase of 30 800 mega hertz radios and 50 pagers for use in emergency situations.

Background:

The Assistance to Firefighter Grant is to help fire departments with equipment purchases.

During an emergency, all critical personnel needs to have access to radios and be accessible. Also, the radio frequency is changing by 2013 so, we must upgrade our systems.

Pagers will have no monthly fee.

Facts to Consider:

- Request not more than \$140,000
- 10% Match Requirement

Fiscal Impact/Funding Source(s):

Match will be from the non-Capital Equipment Fund.

Attachment(s):

- none

Recommendation(s):

- Authorize the City Manager to apply for, accept if awarded, and implement the Assistance to Firefighter Grant.

MOTION: ☐SECOND: ☐

VOTE:

☐ PRESENTED☐ APPROVED☐ DECLINED ACTION☐ TABLED

City Council Meeting Agenda Item

Item Title:	Date:	Agenda Item No.:
Shepherd Drive Abandonment	6/1/2010	6m
Requested By:	Dept./Div:	Dept. Approval:
Forum Sam Houston	716	AK

Issue/Item Description:

Consider the abandonment of Shepherd Drive Right-of Way contained in the Forum Sam Houston plat.

Background:

The Forum Sam Houston is proposing the construction of a multi-family residential complex located near the corner of Sam Houston and Sycamore Streets. Before construction can commence at this site, several properties currently owned by Casey Collum, Pony Farm LLC, and Francisco Rivas must be platted. The Preliminary Plat of two lots, included in the information packet, was approved by the Planning and Zoning Commission in May of 2010. Part of the proposed plat includes the current right-of-way of Shepherd Drive. This current ROW is approximately 500' long and serves several lots owned by Collum and Pony Farm LLC, also managed by Collum.

In the proposed plat, all of the properties adjacent to Shepherd Drive are to be owned by the Forum Sam Houston, with the exception of lot 2, which will remain under the ownership of Rivas. As the properties on both sides of Shepherd are under the same ownership, the abandonment of the ROW will not have any negative impact on property owners. This is also a necessity for the developer to complete their proposed multi-family project.

The portion of Shepherd Drive abandoned between lots 1 and 2 will be evenly divided between the adjacent property owners. Rivas will still have access to his property from Sycamore and some improvements will be made by the developer for him.

Since all of the properties adjacent to Shepherd Drive will now be under the ownership of two people with road frontage along Sycamore, there is not longer the necessity of the ROW. Utilities within this ROW will either be relocated in easements or will remain with the appropriate easements.

Facts to Consider:

- All properties on either side of the existing ROW of Shepherd Drive
- The abandoned ROW will not prohibit access to any properties.
- The Forum Sam Houston final plat will be considered by the Planning and Zoning Commission for approval on June 8, 2010
- The Planning and Zoning Commission approved the preliminary plat at their meeting on May 20, 2010

Fiscal Impact/Funding Source(s):

A small cost savings will be realized due to no longer maintaining Shepherd Drive.

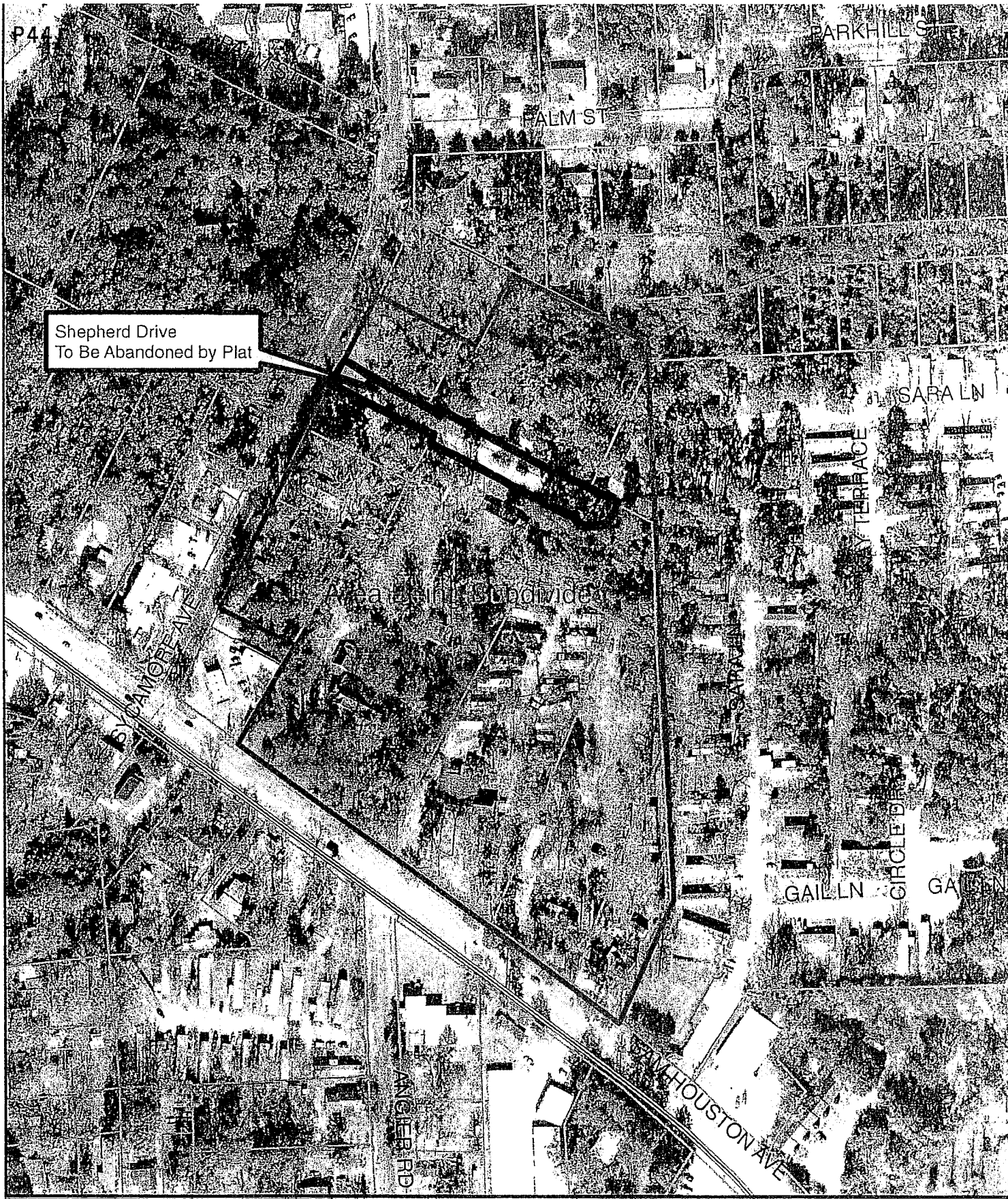
Attachment(s):

- Vicinity Map
- Forum Sam Houston preliminary plat

Recommendation(s):

- Staff recommends approval of the abandonment of the Shepherd Drive ROW in the Forum Sam Houston plat. The Planning and Zoning Commission also approved the preliminary plat.

MOTION: ☐**SECOND:** ☐**VOTE:**☐ **PRESENTED**☐ **APPROVED**☐ **DECLINED ACTION**☐ **TABLED**☐ **OTHER**



*NOTE: These data are for use as a graphical representation only. They are not to be used as data for any other purpose, including but not limited to, engineering, planning, or legal. The user of this data is responsible for its use and for any errors or omissions. The user of this data is also responsible for obtaining all necessary permits and approvals for any proposed project.



Shepherd Drive Abandonment

1 inch = 200 feet



TRINITY RIVER AUTHORITY OF TEXAS - CITY OF
HUNTSVILLE RAW WATER SUPPLY CONTRACT

THE STATE OF TEXAS :

COUNTY OF WALKER :

THIS CONTRACT (hereinafter called "Contract") made and entered into as of the 24th day of August, 1976, by and between Trinity River Authority of Texas, a governmental agency and a body politic and corporate, created by Chapter 518, Acts of the Regular Session of the 54th Legislature, pursuant to Article XVI, Section 59 of the Constitution of Texas (herein called "Authority"), and the City of Huntsville, Texas, a municipal corporation of the State of Texas, acting under the laws of the State of Texas and its home rule charter (herein called "City"):

W I T N E S S E T H

WHEREAS, Authority and City are authorized to enter into this Contract by the Interlocal Cooperation Act; and

WHEREAS, City owns and operates its water distribution system and is in need of an additional source of water supply; and

WHEREAS, Authority holds jointly with the City of Houston, Texas, Permit No. 1970 pursuant to which Authority is authorized to appropriate and divert from the Livingston Reservoir 30% of the water impounded therein; and

WHEREAS, it is the desire of City to acquire the right to purchase from Authority amounts of raw water impounded in the Livingston Reservoir under Permit No. 1970;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Authority agrees to sell raw water to City and City agrees to pay Authority standby charges for the right to purchase raw water upon terms and conditions herein-after set forth, to-wit:

Section 1. QUANTITY OF AND STANDBY CHARGE FOR RAW WATER.

A. QUANTITY OF RAW WATER. Authority is hereby obligated

to sell to City annual average daily amounts of raw water impounded in the Livingston Reservoir under Permit No. 1970 during the period of this agreement for its own use and for distribution to all of the customers served by City's distribution system, as set forth in the following schedule:

<u>FISCAL YEARS</u>	<u>ANNUAL AVERAGE DAILY AMOUNTS</u>
1977 through 1979	2.0 MGD
1980 through 1984	4.0 MGD
1985 through 1994	6.0 MGD
1995 through 1999	8.0 MGD
2000 through 2020	10.0 MGD

"MGD" is an abbreviation for "million gallons of water per day" and refers to a quantity of water during a period of time expressed for convenience in terms of an average daily quantity during a twelve (12) month period, being City's present fiscal year which begins on October 1 and ends on September 30. The value of two MGD, for example, is calculated as follows: Two million gallons multiplied by the number of days in a calendar year.

City shall have the option, at any time and from time to time, to increase the amounts set forth above by giving notice in writing to Authority not less than twelve (12) months prior to the effective date of such increase, whereupon such increased amount shall be effective from and after such effective date for the remaining term of this agreement or until City establishes a further increase in the same manner. With Authority's approval, such increase may become effective in less than twelve (12) months after written notice is given and may exceed ten (10) MGD. Authority will use its best efforts to remain in position to sell to City a maximum daily amount of raw water up to and including a 100% increase over the current annual average daily amount which Authority is obligated to sell to City. City's right to take such amounts of raw water is conditioned on Authority's rights

under said Permit No. 1970 and Authority's contract with the City of Houston dated September 4, 1964 (the "Houston Contract"). If Authority's rights under Permit No. 1970 are changed by any action beyond the control of Authority, and any such change reduces, or has the effect of reducing, the amount of water Authority has the right to take, then, in that event, City's rights hereunder shall be reduced proportionately by the percentage of the decrease Authority has the right to take under Permit No. 1970. City is not obligated to purchase any raw water but is obligated for annual standby charges. The annual standby charges shall be calculated by multiplying the current annual average daily amount Authority is obligated to sell to City by Authority's rates for sale of raw water to municipalities as established by Authority's Resolution R-157.

B. ANNUAL STANDBY CHARGE FOR RAW WATER. City agrees that on or before the 10th day of each March and September beginning September, 1976, it will pay to the Authority an amount equal to 1/2 of the current annual raw water standby charge, calculated as provided in Section 1A hereof. Prior to September, 1976, the Authority will advise City in writing of the current annual raw water standby charge, and, thereafter, will advise City in writing only upon a change therein. The Authority shall not be required to furnish bills to City for raw water standby charges. Provided, the cost of raw water to City shall never be less than the cost of such raw water to Authority, as determined by Authority. If Permit No. 1970, the Houston Contract or any other controlling document is changed outside of the control of Authority, which obligates Authority to costs not anticipated in the present rate structure established by R-157, then Authority

shall redetermine its cost of water in Livingston Reservoir and City's payments hereunder shall be calculated as provided in Section 1A hereof, but using the newly established rate structure.

C. PAYMENT FOR EXCESS WATER TAKEN. Within ten days after each City Fiscal Year, beginning with City Fiscal Year 1977, Authority shall determine the amount of water City has taken from Lake Livingston Reservoir during the preceding City Fiscal Year. If City has taken, during any such year an amount of water in excess of the amount Authority is obligated to sell to City hereunder, according to the yearly schedule set out in Section 1A hereof, then City agrees to pay to Authority, in addition to the standby charge, for such excess water taken, at the rate upon which the annual raw water standby charge for the preceding year was calculated. Authority will bill City for any payment due under this sub-section by September 15 and City shall pay the amount of such bill to Authority by October 1.

Section 2. SPECIAL PROVISIONS.

A. SOURCE OF CONTRACT PAYMENTS. Authority shall never have the right to demand payment by City of any obligations assumed by it or imposed on it under and by virtue of this contract from funds raised or to be raised by taxes levied by City. City's obligations under this contract shall never be construed to be a debt of the City of such kind as to require it under the law of this State to levy and collect a tax to discharge such obligation, it being expressly understood by the parties hereto that all payments due by City hereunder are to be made from water and sewer revenues received by City.

City represents and covenants that all payments to be made hereunder by it shall constitute "Operating Expenses" of its

waterworks and sewer system as defined in Article 1113 of the Revised Civil Statutes of Texas, as amended, and that all such payments will constitute operating expenses of City's waterworks and sewer system.

City agrees to fix and collect such rates and charges for water and sewer services to be supplied by its waterworks and sewer system as will produce revenues in an amount equal to at least the minimum payments due under this contract and other contracts with the Authority and to comply with provisions of ordinances authorizing its outstanding revenue bonds.

B. FORCE MAJEURE. If by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this contract then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kinds of the Government of the United States or the State of Texas or any Civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, and inability on part of Authority to deliver water hereunder for any

reason, or the City to receive water hereunder for any reason, or on account of any other causes not reasonably within the control of the party claiming such inability.

C. STATE OR FEDERAL LAWS RULES, ORDERS OR REGULATIONS.

This contract is subject to all applicable Federal and State laws and any applicable ordinances, rules, orders and regulations of any local, state or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

Section 3. TERM OF CONTRACT; NOTICES.

A. TERM OF CONTRACT. This contract shall be effective upon the date hereof and shall continue in force and effect until December 31, 2020.

B. ADDRESSES AND NOTICE. Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made or accepted by either party to the other must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of ten (10) days after it is so deposited. Notice given in any other manner shall be effective

only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the Authority, to:
 Trinity River Authority of Texas
 P. O. Box 5768
 2723 Avenue E - East
 Arlington, Texas 76011

If to the City, to:
 City of Huntsville
 P. O. Box 831
 Huntsville, Texas 77340

The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other party.

Section 4. SEVERABILITY. The parties hereto agree that if any of the provisions of this contract should be or be held to be invalid or to contravene the laws of this State, or the United States, such fact shall not invalidate the whole agreement, but it shall be construed as though not containing that particular provision, and the rights and obligations of the parties shall be construed and remain in force accordingly.

Section 5. REMEDIES UPON DEFAULT. It is not intended hereby to specify (and this agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by either party hereto and shall be cumulative. Recognizing however, that the Authority's undertaking to provide and maintain a supply of water hereunder is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, the Authority agrees, in the event of any default on its part, that the City shall have available to it the equitable remedy of specific performance in addition

to any other legal or equitable remedies (other than termination) which may also be available to the City. Recognizing that failure in the performance of any of the City's obligations hereunder could not be adequately compensated in money damages alone, the City agrees in the event of any default on its part that the Authority shall have available to it the equitable remedy of specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available to the Authority. Notwithstanding anything to the contrary contained in this agreement, any right or remedy or any default hereunder shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years after the occurrence of such default. No waiver or waivers of any breach or default (or any breaches or defaults) by either party hereto of any term, covenant, condition, or liability hereunder or of performance by the other party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be waiver of subsequent breaches or defaults of any kind, character, or description, under any circumstances.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this contract to be duly executed in several counterparts, each of which

shall constitute an original, all as of the day and year first
above written.

TRINITY RIVER AUTHORITY OF TEXAS

BY David H. Brune
DAVID H. BRUNE, General
Manager

ATTEST:

Wm. J. Philbin
WM. J. PHILBIN, Secretary

(AUTHORITY SEAL)

CITY OF HUNTSVILLE, TEXAS

BY Miami L. Waller
Mayor

ATTEST:

Ruth DeShaw
City Secretary

(CITY SEAL)

APPROVED AS TO LEGALITY:

Jack Hammy
City Attorney

TRINITY RIVER AUTHORITY OF TEXAS - CITY OF HUNTSVILLE
WATER TREATMENT FACILITIES, WATER TRANSMISSION AND
CLEAR WELL STORAGE FACILITIES CONTRACT

THE STATE OF TEXAS :

COUNTY OF WALKER :

THIS CONTRACT (hereinafter called "Contract") made and entered into as of the 28th day of September, 1976, by and between Trinity River Authority of Texas, a governmental agency and a body politic and corporate, created by Chapter 518, Acts of the Regular Session of the 54th Legislature, pursuant to Article XVI, Section 59 of the Constitution of Texas (herein called "Authority"), and the City of Huntsville, Texas, a municipal corporation of the State of Texas, acting under the laws of the State of Texas and its home rule charter (herein called "City");

W I T N E S S E T H

WHEREAS, Authority and City are authorized to enter into this Contract by the Interlocal Cooperation Act; and

WHEREAS, it is desirable and necessary to City that Authority supply treated water to City; and

WHEREAS, Authority proposes to issue its Bonds for the purpose of constructing water treatment facilities, including raw water intake facilities, a water treatment plant and metered treated water discharge facilities including metering facilities which may be required by the Texas Water Rights Commission to be constructed under Permit No. 1970, water transmission and clear well storage and pumping facilities, to enable it to supply treated water to City and to others (herein called "Project", which Project shall be known as the Huntsville Regional Water Supply System), in accordance with Chapters IV, V and X of a report of Bernard Johnson Incorporated, Consulting Engineers of Houston, Texas, entitled City of Huntsville Preliminary Engineering Report on Surface Water Supply J.O. 73022, dated August, 1973,

as such report may be amended or supplemented prior to the execution of construction contracts and as changed by change orders entered after construction contracts have been executed, or as such report may be amended or supplemented to provide expanded service in the future (herein called "Engineering Report").

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Authority agrees to construct the Project in general accordance with the Engineering Report, and to supply treated water to City, upon terms and conditions hereinafter set forth, to-wit:

Section 1. DEFINITION OF TERMS. Terms and expressions as used in this Contract, unless the context clearly shows otherwise, shall have the following meanings:

A. "Additional Contracting Party" means any party not defined as a Contracting Party with whom Authority makes a contract for supplying treated water from the water treatment facilities of the Project.

B. "Adjusted Annual Payment" means the Annual Payment, as adjusted due to service to Additional Contracting Parties and/or as required during or after each Fiscal Year.

C. "Annual Payment" means the amount of money to be paid to Authority by City as its proportionate share of the Annual Requirement.

D. "Annual Requirement" means the total amount of money required for Authority to pay all Operation and Maintenance Expense of the Project, to pay the debt service on its Bonds and to pay any amounts required to be deposited in any special or reserve funds required to be established and/or maintained by the provisions of the Bond Resolution.

E. "Bond Resolutions" means the resolutions of Authority which authorize the Bonds.

F. "Bonds" means the revenue bonds issued by Authority, whether one or more issues, and the interest coupons appertaining thereto, to finance the Project, and any bonds issued to refund any Bonds.

G. "Contracting Party" means the City of Huntsville.

H. "Fiscal Year" means the fiscal year of Authority, which is December 1 through November 30.

I. "MGD" is an abbreviation for "million gallons of water per day" and refers to a quantity of water during a period of time expressed for convenience in terms of an average daily quantity during a calendar year (unless a different period of time is specified). The value of two MGD, for example, is calculated as follows:— Two million gallons multiplied by the number of days in a calendar year.

J. "Operation and Maintenance Expense" means all costs of operation and maintenance of the Project, including (for greater certainty but without limiting the generality of the foregoing) repairs and replacements for which no special fund is created in the Bond Resolutions, the cost of utilities, supervision, engineering, accounting, auditing, legal services, and any other supplies, services, administrative costs and equipment necessary for proper operation and maintenance of the Project, and payments made by Authority in satisfaction of judgments resulting from claims not covered by Authority's insurance or not paid by either City or an

Additional Contracting Party or Parties arising in connection with the operation and maintenance of the Project. The term also includes the charges of the bank or banks where the Bonds are payable. The term does not include the cost of raw water supplies.

Section 2. CONSULTING ENGINEER, CONSTRUCTION OF PROJECT. The Authority and City agree that Bernard Johnson Incorporated shall be the "Consulting Engineers" for the Project. Authority will construct the Project in general accordance with the Engineering Report. It is anticipated that such construction will be in phases and that each phase will be financed by Authority through the issuance of its Bonds. A substantial copy of any proposed resolution authorizing any Bonds shall be submitted to City for approval thereof and no Bonds shall be issued by Authority until a substantial copy of the resolution authorizing the issuance thereof has been approved by ordinance or resolution by City; however, it shall not be required that the price, interest rates or purchasers of any Bonds be approved by City. The City agrees that it will not unreasonably withhold its approval of any submitted proposed resolution.

Section 3. QUANTITY, QUALITY, POINTS OF DELIVERY, MEASURING EQUIPMENT, UNIT OF MEASUREMENT AND DELIVERY PRESSURE.

A. QUANTITY OF TREATED WATER. Authority agrees to provide treatment facilities initially which will enable Authority to deliver City an annual average daily amount of 4.0 MGD with a 100% peaking capability, and Authority will use its best efforts to enlarge the capacity of the Project from time to time, to remain in position to deliver water sufficient for the reasonable demands of City, but its obligations in this regard shall be limited to the amount of water Authority is obligated to sell to

Raw Water Contract

City under a contract of even date herewith, which contract is adopted by reference, and by its commitments to other Contracting Parties and Additional Contracting Parties. Provided that the Authority will not obligate to deliver water to Additional Contracting Parties which will jeopardize the Authority's ability to deliver to City amounts of water from time to time generally in accordance with the above cited contract unless such obligation has been approved by a resolution or ordinance of the Council of City.

B. QUALITY OF TREATED WATER. The parties recognize that the source of water to be delivered by Authority to City under this agreement is from Livingston Reservoir, and must be chemically treated and filtered. The water to be delivered by Authority and received by City shall be potable treated water meeting applicable purity standards of the Texas Department of Health Resources and, where feasible, the U. S. Health Service Drinking Water Standards with the additional requirements that hardness shall be not less than 80 ppm nor greater than 100 ppm, and a residual chlorine of not less than 0.5 ppm at the Point or Points of Delivery. City has satisfied itself that such water will be suitable for its needs.

C. POINTS OF DELIVERY. The initial point of delivery hereunder shall be at the treatment plant to be constructed hereunder by Authority for discharge into the transmission facilities as provided in the Engineering Report. A different or additional point or points of delivery may be agreed upon by the parties hereto as circumstances may require.

D. MEASURING EQUIPMENT. (a) Authority shall furnish, install, operate and maintain at its own expense the necessary metering equipment of standard type for measuring properly the

quantity of water delivered under this agreement. Such metering equipment shall be located on Authority's supply main at a location to be designated by Authority. Such meter or meters and other equipment so installed shall remain the property of Authority. City shall have access to such main metering equipment at all reasonable times, to inspect and to employ an independent laboratory to check metering equipment, but the reading, calibration and adjustment thereof shall be done only by the employees or agents of Authority. For the purpose of this agreement, the original record or reading of the main meter shall be the journal or other record book of Authority in its office in which the records of the employees or agents of Authority who take the reading are or may be transcribed. Upon written request of City, Authority will give City a copy of such journal or record book, or permit City to have access to the same in the office of Authority during reasonable business hours.

(b) Not more than once in each calendar year, on a date as near the end of such calendar year as practical, Authority shall calibrate its main meter or meters, if requested in writing by City to do so, in the presence of a representative of City, and the parties shall jointly observe any adjustments which are made to the meter in case any adjustments shall be necessary, and if the check meter hereinafter provided for has been installed, the same shall also be calibrated by City in the presence of a representative of Authority and the parties shall jointly observe any adjustment in case any adjustment is necessary. If City shall in writing request Authority to calibrate its meters and Authority shall give City written notice of the time when any such calibration is to be made and a representative of City is not present at the time set, Authority may proceed with calibration and adjustment in the absence of any representative of City.

(c) If either party at any time observes a variation between a main delivery meter and the check meter, if any such check meter shall be installed, such party will promptly notify the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment and the main meter shall then be adjusted to accuracy. Each party shall give the other party forty-eight (48) hours' notice of the time of any test of meter so that the other party may conveniently have a representative present.

(d) If, upon any test, the percentage of inaccuracy of metering equipment is found to be in excess of two percent (2%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event farther back than a period of six (6) months. If, for any reason, the main meter is out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered, through the period such meter is out of service or out of repair, shall be estimated and agreed upon by the parties thereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter if the same has been installed and is accurately registering. Otherwise, the best data available shall be deemed any other meters in the transmission line or treatment plant which can be related to the main delivery meter. If no other meters in the system are operational which will allow determination of delivered quantity, then the amount of water

delivered during such period may be estimated (i) by correcting the error if the percentage of error is ascertainable by calibration tests or mathematical calculation, or (ii) by estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter was registering accurately.

(e) City may, at its option and its own expense, install and operate a check meter to check the meter installed by Authority, but the measurement of water for the purpose of this agreement shall be solely by the Authority's meter, except in the cases hereinabove specifically provided to the contrary. Such check meter shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the Authority, but the reading, calibration and adjustment thereof shall be made only by the City, except during any period when a check meter may be used under the provisions hereof for measuring the amount of water delivered, in which case the reading, calibration and adjustment thereof shall be made by Authority with like effect as if such check meter had been furnished or installed by Authority.

E. UNIT OF MEASUREMENT. The unit of measurement for water delivered hereunder shall be 1,000 gallons of water, U. S. Standard Liquid Measure.

F. DELIVERY PRESSURE. The water shall be delivered by Authority at the point of delivery at a pressure sufficient to transmit the water into the clear well storage facilities.

Section 4. FISCAL PROVISIONS.

A. FINANCING THE PROJECT. Authority will pay for the cost of construction of the Project, including metering

facilities which may be required by the Texas Water Rights Commission to be constructed under Permit No. 1970, and will issue its Bonds in amounts necessary which, together with other available funds, if any, will be sufficient to accomplish such construction.

B. ANNUAL REQUIREMENT. It is acknowledged and agreed that payments to be made under this contract and similar contracts with other Contracting Parties and Additional Contracting Parties will be the only source available to Authority to provide the Annual Requirement; and that the Authority has a statutory duty to establish and from time to time to revise the charges for services to be rendered and made available to City hereunder so that the Annual Requirement shall at all times be not less than an amount sufficient to pay or provide for the payment of:

- (a) all Operation and Maintenance Expense;
- (b) the principal of and the interest on the Bonds, as such principal and interest become due, less interest to be paid out of Bond proceeds as permitted by the Bond Resolution;
- (c) during each Fiscal Year, the proportionate part of any special or reserve funds required to be established and/or maintained by the provisions of the Bond Resolution; and
- (d) an amount in addition thereto sufficient to restore any deficiency in any of such funds or accounts required to be accumulated and maintained by the provisions of the Bond Resolution.

C. PAYMENTS BY CITY FOR SERVICES. (a) For services to be rendered to City by Authority hereunder, City agrees to pay, at the time and in the manner herein provided, its proportionate share of the Annual Requirement, which shall be determined as follows and shall constitute City's Annual Payment:

- (i) For the Fiscal Year 1979, (the first year of operation or fraction thereof), the City's proportionate share of the Annual Requirement shall be a percentage obtained by dividing City's estimated annual treated water requirement by the total estimated volume to be treated and used by all Contracting Parties.

City's Annual Payment shall be made to Authority in twelve equal monthly installments. In the event Authority is unable to offer service under this contract to City for the complete Fiscal Year of 1979, the portion of City's Annual Payment attributable to Operation and Maintenance Expense shall be reduced to the prorata portion of the Fiscal Year for which service is provided. Such payments shall be made in accordance with and at the times set forth in a Schedule of Payments for 1979, which will be supplied to City. At the close of the 1979 Fiscal Year, Authority shall determine City's percentage by dividing City's actual metered usage by the total actual metered usage of the System by all Contracting Parties. City's Adjusted Annual Payment shall be calculated by multiplying City's redetermined percentage times the Annual Requirement. The difference between the Adjusted Annual Payment and the Annual Payment, if any, when determined, shall be applied as a credit or a debit to City's account with Authority and shall be credited or debited to City's next subsequent monthly statement.

- (ii) For the Fiscal Year 1980 and each succeeding Fiscal Year thereafter, City's proportionate share of the Annual Requirement shall be a percentage obtained by dividing City's estimated treated water requirement for such year by the total estimated treated water requirement of all Contracting Parties and Additional Contracting Parties for such year. Calculation of Annual Payment and Adjusted Annual Payment for 1980 and each succeeding Fiscal Year thereafter shall be determined in the manner described in (1) above.

(b) If, during any Fiscal Year, Authority begins providing services to an Additional Contracting Party or Parties, City's Annual Payment for such Fiscal Year shall be determined in the following manner:

- (i) Such Additional Contracting Party or Parties estimated treated water requirement for such year, or portion thereof, shall be determined by Authority;
 - (ii) City's proportionate share of the Annual Requirement shall be a percentage, redetermined by dividing City's estimated treated water requirement by the total annual estimated treated water requirement by all Contracting Parties and Additional Contracting Parties, including that estimated for the Additional Contracting Party or Parties for the remaining portion of such Fiscal Year;
 - (iii) Authority shall redetermine the Annual Requirement, taking into consideration any costs incurred on account of the Additional Contracting Party or Parties;
 - (iv) City's Annual Payment shall be redetermined by multiplying City's redetermined percentage times the redetermined Annual Requirement;
 - (v) Following the first Fiscal Year or part thereof of service to an Additional Contracting Party, City's Annual Payment shall be determined annually in the manner set forth above, incorporating the Additional Contracting Party in the calculations on the same basis as all parties being served by the System.
- (c) City's Annual Payment shall also be redetermined, in the manner set out above, at any time during any Fiscal Year if:
- (i) Additions, enlargements or improvements to the Project are constructed by Authority to provide continuing service which in turn requires a redetermination of the Annual Requirement; or
 - (ii) Unusual or extraordinary expenditures for maintenance and operation are required which are not provided for in the Annual Budget or in the Bond Resolution.
- (d) Provided, that in determining City's proportionate share of the Annual Requirement, City's estimated treated water requirement and actual metered usage for any Fiscal Year shall never be considered to be less than that portion of the Project constructed for the exclusive requirements of the City, in accordance with Section 3.A of this contract.

(e) On or before July 1 of each year Authority shall furnish City with a tentative schedule of the monthly payments to be made by City to the Authority for the ensuing Fiscal Year. On or before November 1 of each year, Authority shall furnish City with a final schedule of the monthly payments to be made by City to the Authority for the ensuing Fiscal Year, together with supporting budgetary or proposed budgetary data showing the basis for arriving at such schedule. City hereby agrees that it will make such payments to the Authority on or before the 10th day of each month of such Fiscal Year. If the City at any time disputes the amount to be paid by it to Authority, City shall nevertheless promptly make the payment or payments previously approved for the immediately preceding budget period, provided that such payment shall never be less than the City's proportionate share of (b), (c) and (d) of sub-section C above, and, if it is subsequently determined by agreement, arbitration or court decision that such disputed payments made by City should have been less, or more, Authority shall promptly revise and reallocate the charges among all parties then being served by Authority in such manner that City will recover its overpayment or Authority will recover the amount due it.

(f) If City's Annual Payment is redetermined as is herein provided, Authority will promptly furnish City with an updated schedule of monthly payments reflecting such redetermination.

(g) As additional consideration for the payments provided for above, City shall have an exclusive right to the use of the transmission and clear well storage facilities described in the Engineering Report to be constructed hereunder. Further, City shall have the right to tap said facilities, if need be, to serve water customers of City. The rights herein granted shall be for

the useful life of said facilities, as determined by City. Provided, when the debt service requirements of Authority attributable to said transmission and clear well storage facilities have been finally paid, City shall have the rights granted herein without payment of any fees or charges to Authority, except for any actual costs to Authority attributable to ownership of said facilities which Authority is required to pay.

Section 5. SPECIAL PROVISIONS.

A. Authority will proceed to finance and construct the Project to the end that it will be able to deliver treated water to City beginning on May 1, 1979.

B. Title to all water supplied hereunder shall remain in Authority through the Point(s) of Delivery, and upon passing through the Point(s) of Delivery, such title to the water shall pass to City. Each of the parties hereto agrees to save and hold the other party harmless from all claims, demands and causes of action which may be asserted by anyone on account of the transportation and delivery of said water while title remains in such party.

C. It is expressly understood and agreed that any obligations on the part of Authority to complete the Project and to provide water to City shall be (i) conditioned upon Authority's ability to obtain all necessary material, labor and equipment and upon the ability of Authority to finance the cost of the Project through the actual sale of Authority's Bonds and (ii) subject to all present and future valid laws, orders, rules and regulations of the United States of America, the State of Texas, and any regulatory body having jurisdiction (and the parties agree to cooperate to obtain compliancy therewith).

D. Authority shall never have the right to demand payment by City of any obligations assumed by it or imposed on it under and by virtue of this contract from funds raised or to be raised by taxes levied by City. City's obligations under this contract shall never be construed to be a debt of the City of such kind as to require it under the law of this State to levy and collect a tax to discharge such obligation, it being expressly understood by the parties hereto that all payments due by City hereunder are to be made from water and sewer revenues received by City.

E. City represents and covenants that all payments to be made hereunder by it shall constitute "Operating Expenses" of its waterworks and sewer system as defined in Article 1113 of the Revised Civil Statutes of Texas, as amended, and that all such payments will constitute operating expenses of City's waterworks and sewer system.

F. City agrees to fix and collect such rates and charges for water and sewer services to be supplied by its waterworks and sewer system as will produce revenues in an amount equal to at least the minimum payments due under this contract and to comply with provisions of ordinances authorizing its outstanding revenue bonds.

G. It is agreed and understood by the parties to this agreement that City now owns and operates a system of wells producing water and the City may elect to acquire and operate additional wells. While nothing in this Contract shall obligate the City to continue the operation of its own wells, nevertheless the City agrees that so long as it does operate such wells, it will coordinate production from its own wells in such manner as to minimize large daily fluctuations in the quantity of water taken under this Contract.

H. The Authority agrees to maintain with responsible insurers, authorized to do business in Texas, to provide against loss of or damage to the Project, loss of revenues and public or other liability to protect the interests of the Authority and City, the following types of insurance, with such variations as shall reasonably be required to conform to applicable standard or customary insurance premiums:

TYPE OF COVERAGE

DETAILS OF COVERAGE

FAITHFUL PERFORMANCE BLANKET
BOND

Provides coverage for loss caused the insured through failure of any employee, acting alone or in collusion with others, to perform faithfully his duties or to account properly for all monies and property received by virtue of his position or employment; \$100,000 for the General Manager and Secretary-Treasurer and \$25,000 for each employee.

EMPLOYERS LIABILITY

Provides coverage to a maximum of \$100,000 for injury to an employee, including death resulting therefrom, while employed by the insured. United States Longshoreman's and Harbor Worker's Compensation Act Endorsements are specifically included.

COMPREHENSIVE AUTOMOBILE

Provides coverage with limits of \$100,000 per person, \$300,000 per occurrence, bodily injury and \$50,000 property damage arising out of ownership, maintenance or use, including loading or unloading, of any automobile, owned, hired, or operated by other persons in behalf of the insured. Medical Payments insurance in the amount of \$5,000 is provided for the passenger automobiles.

PROPERTY DAMAGE

Provides coverage for Fire, Lightning, Extended Coverage, and Vandalism and Malicious Mischief to a limit of \$1,000,000 on the Project.

GENERAL LIABILITY

Provides General Liability and Contractual Liability coverage with the following limits:
 Bodily Injury-\$100,000/person, \$300,000/occurrence, and \$300,000 aggregate.
 Property Damage-\$100,000/occurrence, and \$100,000 aggregate.

The Authority may maintain such insurance under a blanket policy or policies insuring the Authority's property and interest at other locations. In the event Authority is sued or is placed on notice of demand for payment of a claim or claims not covered by Authority's insurance or claims not paid by either City or an Additional Contracting Party or Parties arising in connection with the operation and maintenance of the Project, then in any of said events, Authority shall forthwith notify City in writing as to the nature of the claim or litigation which could result in an increase in operation and maintenance expense. City shall have ten (10) days from receipt of such written notification in which to advise and comment to Authority concerning any claim, suit or demand for payment and Authority shall duly consider City's advice and comments in any final disposition of said claim or demand for payment.

I. The transmission and clear well storage facilities described in Chapter IV of the Engineering Report to be constructed hereunder shall be maintained and operated by City at its expense, and City covenants that it will operate and maintain said facilities. City agrees that it will save and hold harmless Authority from all claims, demands and causes of action which may be asserted by anyone on account of Authority's ownership of said transmission and clear well storage facilities so long as City is operating and maintaining said facilities.

Section 6. FORCE MAJEURE. If by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this contract, other than the obligation of City to make the payments required under (b) of this section, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas or any Civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage

or accidents to machinery, pipelines or canals, partial or entire failure of water supply, and inability on part of Authority to deliver water hereunder for any reason, or the City to receive water hereunder for any reason, or on account of any other causes not reasonably within the control of the party claiming such inability.

Section 7. UNCONDITIONAL OBLIGATION TO PAY DEBT SERVICE. Recognizing that the Authority will use payments received by City and others to pay, secure and finance the issuance of the Bonds, it is hereby agreed that upon the issuance and sale of any Bonds by the Authority to provide funds for the Project, City shall be unconditionally obligated to pay its proportionate share of the debt service on such Bonds, regardless of whether or not the Authority is actually delivering water to City hereunder, or whether or not City actually takes water hereunder, whether due to Force Majeure or otherwise. Under such circumstances, the amount due to Authority from City shall be a percentage of the debt service on the Bonds for the period of any such failure of service hereunder. Such percentage shall be the last percentage used by Authority in determining City's Annual Payment prior to any such failure of service, and, in the event service is not begun hereunder, such percentage shall be that specified in the table in Section 4D(a)(i) hereof. This covenant by City shall be for the holders of the Bonds.

Section 8. TERM OF CONTRACT; MODIFICATION; NOTICES; STATE OR FEDERAL LAWS, RULES, ORDERS OR REGULATIONS.

A. TERM OF CONTRACT. This contract shall be effective upon execution hereof and shall continue in force and effect until December 31, 2020, and thereafter shall continue

force and effect until all Bonds and refunding bonds, if any, issued in lieu of the Bonds have been paid.

B. MODIFICATION. No change or modification of this contract shall be made which will affect adversely the prompt payment when due of all moneys required to be paid by City under the terms of this contract and no such change shall be effective which would cause a violation of any provisions of any resolution of Authority authorizing the issuance of Bonds or any bonds issued to refund any of the Bonds.

C. ADDRESSES AND NOTICE. Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by either party to the other must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changes as hereinafter provided, be as follows:

If to the Authority, to:
 Trinity River Authority of Texas
 P. O. Box 5768
 2723 Avenue E - East
 Arlington, Texas 76011

If to the City, to:
 City of Huntsville
 P. O. Box 831
 Huntsville, Texas 77340

The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other party.

D. STATE OR FEDERAL LAWS, RULES, ORDERS OR REGULATIONS.

This contract is subject to all applicable Federal and State laws and any applicable ordinances, rules, orders and regulations of any local, state or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

Section 9. SEVERABILITY. The parties hereto agree that if any of the provisions of this contract should be or be held to be invalid or to contravene the laws of this State, or the United States, such fact shall not invalidate the whole agreement, but it shall be construed as though not containing that particular provision, and the rights and obligations of the parties shall be construed and remain in force accordingly.

Section 10. CONTINUED SERVICE. The parties hereto agree that upon the expiration of this contract that City shall have the right to continued service for an additional period of fifty (50) years, or for such other time as may be agreed, upon execution of an appropriate agreement between City and Authority.

Section 11. REMEDIES UPON DEFAULT. It is not intended hereby to specify (and this agreement shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by either party hereto and shall be cumulative. Recognizing however, that the Authority's undertaking to provide and maintain a supply of water hereunder is

an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, the Authority agrees, in the event of any default on its part, that the City shall have available to it the equitable remedy of specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available to the City. Recognizing that failure in the performance of any of the City's obligations hereunder could not be adequately compensated in money damages alone, the City agrees in the event of any default on its part that the Authority shall have available to it the equitable remedy of specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available to the Authority. Notwithstanding anything to the contrary contained in this agreement, any right or remedy or any default hereunder, except the right of the Authority to receive the Annual Payment which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years after the occurrence of such default. No waiver or waivers of any breach or default (or any breaches or defaults) by either party hereto of any term, covenant, condition, or liability hereunder or of performance by the other party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be waiver of subsequent breaches or defaults of any kind, character, or description, under any circumstances.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this

contract to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written.

TRINITY RIVER AUTHORITY OF TEXAS

BY David H. Brune
DAVID H. BRUNE, General
Manager

ATTEST:

Wm. J. Philbin
WM. J. PHILBIN, Secretary

(AUTHORITY SEAL)

CITY OF HUNTSVILLE, TEXAS

BY Marion L. Waller
Mayor

ATTEST:

Ruth A. Shaw
City Secretary

(CITY SEAL)

APPROVED AS TO LEGALITY:

Joan Hammy
City Attorney

TRINITY RIVER AUTHORITY OF TEXAS - HUNTSVILLE
REGIONAL WATER SUPPLY SYSTEM CONTRACT

THE STATE OF TEXAS :
COUNTY OF WALKER :

THIS CONTRACT (hereinafter called "Contract") made and entered into as of the 25th day of June, 1997, by and between Trinity River Authority of Texas, a governmental agency and a body politic and corporate, created by Chapter 518, Acts of the Regular Session of the 54th Legislature, 1955, as amended, (the "Authority Act") pursuant to Article XVI, Section 59 of the Constitution of Texas (herein called "Authority"), and the City of Huntsville, Texas, a municipal corporation of the State of Texas, acting under the laws of the State of Texas and its home rule charter (herein called "City");

W I T N E S S E T H:

WHEREAS, as of September 28, 1976, the Trinity River Authority of Texas - City of Huntsville Water Treatment Facilities, Water Transmission and Clear Well Storage Facilities Contract, as amended as of December 7, 1983 and November 2, 1995 (collectively, the "Original Contract") was duly entered into by and between Authority and City; and

WHEREAS, the Original Contract provided that Authority would, for the benefit of and to serve City and others, issue its bonds for the purpose of constructing water treatment facilities, including raw water intake facilities, a water treatment plant and metered treated water discharge facilities, water transmission and clear well storage and pumping facilities, constituting the Huntsville Regional Water Supply System (the "System") as described in the Original Contract; and

WHEREAS, pursuant to the Original Contract, Authority duly issued and delivered its bonds for the purpose of acquiring, constructing, equipping, completing, improving and extending the System; and

WHEREAS, Authority and City are authorized to enter into this Contract by Chapter 791, Texas Government Code, as amended, known as the Interlocal Cooperation Act and the Authority Act; and

WHEREAS, Authority and City deem it to be in their respective best interests to enter into a new contract relating to all future projects involving additions, improvements, repairs, replacements, expansions and extensions of the System, such future projects being described herein as the "Project", and that henceforth no further bonds (other than refunding bonds) shall be issued pursuant to the Original Contract; and

WHEREAS, the initial project, subject to the terms of this Contract, is initially described in an engineering report dated May, 1996 prepared by Alan Plummer Associates, Inc., Consulting Engineers (the "Initial Project"); and

WHEREAS, such engineering report, including all amendments and supplements thereto made prior to the execution of acquisition and construction contracts for the Initial Project and as changed by change orders entered after acquisition and construction contracts for the Initial Project have been executed is hereinafter called the "Initial Engineering Report"; and

WHEREAS, the scope of the Initial Project, as described in the Initial Engineering Report provided for in this Contract, may be expanded, amended, modified or added to by future engineering reports (each an "Additional Engineering Report" and, together with the Initial Engineering Report, shall be collectively referred to as the "Engineering Report") in any manner agreed to by Authority and City, with any such expansion, amendment, modification or addition to the Initial Project (each an "Additional Project" and, together with the Initial Project, shall be collectively referred to as the "Project") to be subject to the further terms of this Contract in all respects.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Authority agrees to construct the Project in general accordance with the Engineering Report upon terms and conditions hereinafter set forth, to wit:

Section 1. DEFINITION OF TERMS. Terms and expressions as used in this Contract, unless the context clearly shows otherwise, shall have the following meanings:

A. "Additional Contracting Party" means any party, other than the Contracting Party, with whom Authority makes a contract for supplying treated water from the water treatment facilities of the System or Project, any such Additional Contracting Party being required to execute a contract with Authority substantially similar to this Contract.

B. "Adjusted Annual Payment" means the Annual Payment, as adjusted due to service to Additional Contracting Parties and/or as required during or after each Fiscal Year.

C. "Annual Payment" means the amount of money to be paid to Authority by City as its proportionate share of the Annual Requirement.

D. "Annual Requirement" means the total amount of money required for Authority to pay all Operation and Maintenance Expense of the System, to pay the debt service on its Bonds and to pay any amounts required to be deposited in any special or reserve funds required to be established and/or maintained by the provisions of the Bond Resolution.

E. "Bond Resolution" means the resolution or resolutions of Authority which authorize the Bonds.

F. "Bonds" means the revenue bonds issued by Authority, whether one or more issues, and the interest coupons appertaining thereto,

if any, to finance the Project, including the Initial Project and any Additional Project, and any bonds issued to refund any such bonds or refunding bonds.

G. "Contracting Party" means the City of Huntsville.

H. "Fiscal Year" means the fiscal year of Authority, which is December 1 through November 30.

I. "MGD" is an abbreviation for "million gallons of water per day" and refers to a quantity of water during a period of time expressed for convenience in terms of an average daily quantity during a calendar year (unless a different period of time is specified). The value of two MGD, for example, is calculated as follows: Two million gallons multiplied by the number of days in a calendar year.

J. "Operation and Maintenance Expense" means all costs of operation and maintenance of the System, including (for greater certainty but without limiting the generality of the foregoing) repairs and replacements for which no special fund is created in the Bond Resolution, the cost of utilities, supervision, engineering, accounting, auditing, legal services, and any other supplies, services, administrative costs and equipment necessary for proper operation and maintenance of the System, and payments made by Authority in satisfaction of judgments resulting from claims not covered by Authority's insurance or not paid by either City or an Additional Contracting Party or Parties arising in connection with the operation and maintenance of the System. The term also includes the charges of the bank or banks where the Bonds are payable. The term does not include the cost of raw water supplies.

Section 2. CONSULTING ENGINEER, CONSTRUCTION OF PROJECT. Authority and City shall mutually agree upon and designate the consulting engineers for the Project. Authority will construct the Project as part of the System in general accordance with the applicable Engineering Report. It is anticipated that such construction will be in phases and that each phase will be financed by Authority through the issuance of its Bonds. A substantial copy of any proposed Bond Resolution shall be submitted to City for approval thereof and no Bonds shall be issued by Authority until a substantial copy of the Bond Resolution authorizing the issuance thereof has been approved by ordinance or resolution of City; however, it shall not be required that the price, interest rates or purchasers of any Bonds be approved by City. City agrees that it will not unreasonably withhold its approval of any submitted proposed Bond Resolution.

Section 3. QUANTITY, QUALITY, POINTS OF DELIVERY, MEASURING EQUIPMENT, UNIT OF MEASUREMENT AND DELIVERY PRESSURE.

A. QUANTITY OF TREATED WATER. Authority has agreed in the Original Contract to provide treatment facilities which will enable Authority to deliver City an annual average daily amount of 4.0 MGD with a 100% peaking capability, and Authority will use its best efforts to enlarge the capacity of the System or Project from time

to time, to remain in position to deliver water sufficient for the reasonable demands of City, but its obligations in this regard shall be limited to the amount of water Authority is obligated to sell to City under a contract dated September 28, 1976, or any amendment thereof, which contract is adopted by reference, and by its commitments to Additional Contracting Parties. Provided that Authority will not obligate to deliver water to Additional Contracting Parties which will jeopardize Authority's ability to deliver to City amounts of water from time to time generally in accordance with the above cited contract unless such obligation has been approved by a resolution or ordinance of City.

B. QUALITY OF TREATED WATER. The parties recognize that the source of water to be delivered by Authority to City under this agreement is from Livingston Reservoir, and must be chemically treated and filtered. The water to be delivered by Authority and received by City shall be potable treated water meeting applicable purity standards of the Texas Natural Resource Conservation Commission and, where feasible, the U.S. Environmental Protection Agency Standards with the additional requirements that hardness shall be not greater than 140 ppm, calcium carbonate stability shall be within .3 plus or minus of the stability point as calculated by the Langelier Index method, and a residual chlorine of not less than 0.5 ppm at the Point or Points of Delivery. City has satisfied itself that such water will be suitable for its needs.

C. POINTS OF DELIVERY. The initial point of delivery under the Original Contract is located at the treatment plant constructed pursuant thereto by Authority for discharge into the transmission facilities as provided in the engineering report described in the Original Contract. A different or additional point or points of delivery may be agreed upon by the parties hereto as circumstances may require.

D. MEASURING EQUIPMENT. (a) Pursuant to the Original Contract, Authority has furnished and installed and is operating and maintaining the necessary metering equipment of standard type for measuring properly the quantity of water delivered under the Original Contract. Such metering equipment is located at points designated by Authority in accordance with the engineering report referred to in the Original Contract. Such meters and other equipment so installed shall remain the property of Authority. Additional metering equipment may be installed upon mutual agreement of Authority and City in accordance with an Additional Engineering Report. City shall have access to such metering equipment at all reasonable times, to inspect and to employ an independent laboratory to check metering equipment, but the reading, calibration and adjustment thereof shall be done only by the employees or agents of Authority. For the purpose of this Contract, the original record or reading of a meter shall be the journal or other record book of Authority in its office in which the records of the employees or agents of Authority who take the reading are or may be transcribed. Upon written request of City, Authority will give City a copy of such journal or record book, or permit City to have access to the same in the office of Authority during reasonable business hours.

(b) Not more than once in each calendar year, on a date as near the end of such calendar year as practical, Authority shall calibrate its meter or meters, if requested in writing by City to do so, in the presence of a representative of City, and the parties shall jointly observe any adjustments which are made to the meter in case any adjustments shall be necessary, and if the check meter hereinafter provided for has been installed, the same shall also be calibrated by City in the presence of a representative of Authority and the parties shall jointly observe any adjustment in case any adjustment is necessary. If City shall in writing request Authority to calibrate its meters and Authority shall give City written notice of the time when any such calibration is to be made and a representative of City is not present at the time set, Authority may proceed with calibration and adjustment in the absence of any representative of City.

(c) If either party at any time observes a variation between a delivery meter and the check meter, if any such check meter shall be installed, such party will promptly notify the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment and the meter shall then be adjusted to accuracy. Each party shall give the other party forty-eight (48) hours' notice of the time of any test of meter so that the other party may conveniently have a representative present.

(d) If, upon any test, the percentage of inaccuracy of metering equipment is found to be in excess of two percent (2%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event farther back than a period of six (6) months. If, for any reason, the meter is out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered, through the period such meter is out of service or out of repair, shall be estimated and agreed upon by the parties thereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter if the same has been installed and is accurately registering. Otherwise, the best data available shall be deemed any other meters in the transmission line or treatment plant which can be related to the delivery meter. If no other meters in the system are operational which will allow determination of delivered quantity, then the amount of water delivered during such period may be estimated (i) by correcting the error if the percentage of error is ascertainable by calibration tests or mathematical calculation, or (ii) by estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter was registering accurately.

(e) City may, at its option and its own expense, install and operate a check meter to check the meter installed by Authority, but the measurement of water for the purpose of this Contract shall be solely by Authority's meter, except in the cases hereinabove

specifically provided to the contrary. Such check meter shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of Authority, but the reading, calibration and adjustment thereof shall be made only by City, except during any period when a check meter may be used under the provisions hereof for measuring the amount of water delivered, in which case the reading, calibration and adjustment thereof shall be made by Authority with like effect as if such check meter had been furnished or installed by Authority.

E. UNIT OF MEASUREMENT. The unit of measurement for water delivered hereunder shall be 1,000 gallons of water, U. S. Standard Liquid Measure.

F. DELIVERY PRESSURE. Pursuant to the Original Contract and this Contract, water shall be delivered by Authority at the point(s) of delivery at a pressure sufficient to transmit the water into the clear well storage facilities or as otherwise described as part of the System or Project.

Section 4. FISCAL PROVISIONS.

A. FINANCING THE PROJECT. Authority will use its best efforts to pay for the cost of construction of the Project as part of the System through the issuance of its Bonds in amounts necessary which, together with other available funds, if any, will be sufficient to accomplish such construction.

B. ANNUAL REQUIREMENT. It is acknowledged and agreed that payments to be made under this Contract and similar contracts with Additional Contracting Parties will be the only source available to Authority to provide the Annual Requirement; and that Authority has a statutory duty to establish and from time to time to revise the charges for services to be rendered and made available to City hereunder so that the Annual Requirement shall at all times be not less than an amount sufficient to pay or provide for the payment of:

(a) all Operation and Maintenance Expense;

(b) the principal of and the interest on the Bonds, as such principal and interest become due, less interest to be paid out of Bond proceeds as permitted by the Bond Resolution;

(c) during each Fiscal Year, the proportionate part of any special or reserve funds required to be established and/or maintained by the provisions of the Bond Resolution; and

(d) an amount in addition thereto sufficient to restore any deficiency in any of such funds or accounts required to be accumulated and maintained by the provisions of the Bond Resolution.

C. PAYMENTS BY CITY FOR SERVICES. (a) For services to be rendered to City by Authority hereunder, City agrees to pay, at the

time and in the manner herein provided, its proportionate share of the Annual Requirement, which shall be determined as follows and shall constitute City's Annual Payment:

(i) For the Fiscal Year or fraction thereof during which the Project initially begins operations, City's proportionate share of the Annual Requirement shall be a percentage obtained by dividing City's estimated annual treated water requirement by the total estimated volume to be treated and used by City and all Additional Contracting Parties.

City's Annual Payment shall be made to Authority in twelve equal monthly installments. In the event Authority is unable to offer service under this Contract to City for the complete initial Fiscal Year, the portion of City's Annual Payment attributable to Operation and Maintenance Expense shall be reduced to the prorata portion of the Fiscal Year for which service is provided. Such payments shall be made in accordance with and at the times set forth in a Schedule of Payments for such initial Fiscal Year, which will be supplied to City. At the close of such initial Fiscal Year, Authority shall determine City's percentage by dividing City's actual metered usage by the total actual metered usage of the System by City and all Additional Contracting Parties. City's Adjusted Annual Payment shall be calculated by multiplying City's redetermined percentage times the Annual Requirement. The difference between the Adjusted Annual Payment and the Annual Payment, if any, when determined, shall be applied as a credit or a debit to City's account with Authority and shall be credited or debited to City's next subsequent monthly statement or statements.

(ii) For each succeeding Fiscal Year thereafter, City's proportionate share of the Annual Requirement shall be a percentage obtained by dividing City's estimated treated water requirement for such year by the total estimated treated water requirement of City and all Additional Contracting Parties for such year. Calculation of Annual Payment and Adjusted Annual Payment for each succeeding Fiscal Year thereafter shall be determined in the manner described in (i) above.

(b) If, during any Fiscal Year, Authority begins providing services to an Additional Contracting Party or Parties, City's Annual Payment for such Fiscal Year shall be determined in the following manner:

(i) Such Additional Contracting Party or Parties estimated treated water requirement for such year, or portion thereof, shall be determined by Authority;

(ii) City's proportionate share of the Annual Requirement shall be a percentage, redetermined by dividing City's estimated treated water requirement by the total annual estimated treated water requirement by City and all Additional Contracting Parties, including

that estimated for the new Additional Contracting Party or Parties for the remaining portion of such Fiscal Year;

(iii) Authority shall redetermine the Annual Requirement, taking into consideration any costs incurred on account of the new Additional Contracting Party or Parties;

(iv) City's Annual Payment shall be redetermined by multiplying City's redetermined percentage times the redetermined Annual Requirement;

(v) Following the first Fiscal Year or part thereof of service to a new Additional Contracting Party, City's Annual Payment shall be determined annually in the manner set forth above, incorporating the new Additional Contracting Party in the calculations on the same basis as all parties being served by the System.

(c) City's Annual Payment shall also be redetermined, in the manner set out above, at any time during any Fiscal Year if:

(i) Additions, enlargements or improvements to the Project are constructed by Authority to provide continuing service which in turn requires a redetermination of the Annual Requirement; or

(ii) Unusual or extraordinary expenditures for maintenance and operation are required which are not provided for in the Annual Budget or in the Bond Resolution.

(d) Provided, that in determining City's proportionate share of the Annual Requirement, City's estimated treated water requirement and actual metered usage for any Fiscal Year shall never be considered to be less than that portion of the Project constructed for the exclusive requirements of the City, in accordance with Section 3.A. of the Original Contract.

(e) On or before July 1 of each year Authority shall furnish City with a tentative schedule of the monthly payments to be made by City to Authority for the ensuing Fiscal Year. On or before November 1 of each year, Authority shall furnish City with a final schedule of the monthly payments to be made by City to Authority for the ensuing Fiscal Year, together with supporting budgetary or proposed budgetary data showing the basis for arriving at such schedule. City hereby agrees that it will make such payments to Authority on or before the 10th day of each month of such Fiscal Year. If City at any time disputes the amount to be paid by it to Authority, City shall nevertheless promptly make the payment or payments previously approved for the immediately preceding budget period, provided that such payment shall never be less than City's proportionate share of (b), (c) and (d) of subsection B above, and, if it is subsequently determined by agreement, arbitration or court decision that such disputed payments made by City should have been less, or more, Authority shall promptly revise and reallocate the

charges among all parties then being served by Authority in such manner that City will recover its overpayment or Authority will recover the amount due it.

(f) If City's Annual Payment is redetermined as is herein provided, Authority will promptly furnish City with an updated schedule of monthly payments reflecting such redetermination.

(g) As additional consideration for the payments provided for above, City shall have an exclusive right to the use of the transmission and clear well storage facilities described in the engineering report incorporated into the Original Contract. Further, City shall have the right to tap said facilities, if need be, to serve water customers of City. The rights herein granted shall be for the useful life of said facilities, as determined by City. Provided, when the debt service requirements of Authority attributable to said transmission and clear well storage facilities have been finally paid, City shall have the rights granted herein without payment of any fees or charges to Authority, except for any actual costs to Authority attributable to ownership of said facilities which Authority is required to pay.

Section 5. SPECIAL PROVISIONS.

A. Authority will proceed to finance and construct the Project in accordance with the Engineering Report without unreasonable delay.

B. Title to any water supplied hereunder shall remain in Authority through the Point(s) of Delivery, and upon passing through the Point(s) of Delivery, such title to the water shall pass to City. Each of the parties hereto agrees to save and hold the other party harmless from all claims, demands and causes of action which may be asserted by anyone on account of the transportation and delivery of said water while title remains in such party.

C. It is expressly understood and agreed that any obligations on the part of Authority to construct or complete the Project and to provide water to City shall be (i) conditioned upon Authority's ability to obtain all necessary material, labor and equipment and upon the ability of Authority to finance the cost of the Project through the actual sale of Authority's Bonds and (ii) subject to all present and future valid laws, orders, rules and regulations of the United States of America, the State of Texas, and any regulatory body having jurisdiction (and the parties agree to cooperate to obtain compliancy therewith).

D. Authority shall never have the right to demand payment by City of any obligations assumed by it or imposed on it under and by virtue of this Contract from funds raised or to be raised by taxes levied by City. City's obligations under this Contract shall never be construed to be a debt of City of such kind as to require it under the law of this State to levy and collect a tax to discharge such obligation, it being expressly understood by the parties hereto that all payments due by City hereunder are to be made from water and sewer revenues received by City.

E. City represents and covenants that all payments to be made hereunder by it shall constitute "Operating Expenses" of its waterworks and sewer system as defined in Article 1113 of the Revised Civil Statutes of Texas, as amended, and that all such payments will constitute operating expenses of City's waterworks and sewer system.

F. City agrees to fix and collect such rates and charges for water and sewer services to be supplied by its waterworks and sewer system as will produce revenues in an amount equal to at least the minimum payments due under this Contract and to comply with provisions of ordinances authorizing its outstanding revenue bonds.

G. It is agreed and understood by the parties to this Contract that City now owns and operates a system of wells producing water and City may elect to acquire and operate additional wells. While nothing in this Contract shall obligate City to continue the operation of its own wells, nevertheless City agrees that so long as it does operate such wells, it will coordinate production from its own wells in such manner as to minimize large daily fluctuations in any quantity of water taken under this Contract.

H. Authority agrees to maintain with responsible insurers, authorized to do business in Texas, to provide against loss of or damage to the Project, loss of revenues and public or other liability to protect the interests of Authority and City, the following types of insurance, with such variations as shall reasonably be required to conform to applicable standard or customary insurance premiums:

TYPE OF COVERAGE

DETAILS OF COVERAGE

FAITHFUL PERFORMANCE BLANKET BOND

Provides coverage for loss caused the insured through failure of any employee, acting alone or in collusion with others, to perform faithfully his duties or to account properly for all monies and property received by virtue of his position or employment; \$100,000 for the General Manager and Secretary-Treasurer and \$25,000 for each employee.

EMPLOYERS LIABILITY

Provides coverage to a maximum of \$100,000 for injury to an employee, including death resulting therefrom, while employed by the insured. United States Longshoreman's and

Harbor Worker's Compensation Act Endorsements are specifically included.

COMPREHENSIVE AUTOMOBILE

Provides coverage with limits of \$100,000 per person, \$300,000 per occurrence, bodily injury and \$50,000 property damage arising out of ownership, maintenance or use, including loading or unloading, of any automobile, owned, hired, or operated by other persons in behalf of the insured. Medical Payments insurance in the amount of \$5,000 is provided for the passenger automobiles.

PROPERTY DAMAGE

Provides coverage for Fire, Lightning, Extended Coverage, and Vandalism and Malicious Mischief to a limit of \$1,000,000 on the Project.

GENERAL LIABILITY

Provides General Liability and Contractual Liability coverage with the following limits:

Bodily Injury-\$100,000/person, \$300,000/occurrence, and \$300,000 aggregate.

Property Damage-\$100,000/occurrence and \$100,000 aggregate.

Authority may maintain such insurance under a blanket policy or policies insuring Authority's property and interest at other locations. In the event Authority is sued or is placed on notice of demand for payment of a claim or claims not covered by Authority's insurance or claims not paid by either City or an Additional Contracting Party or Parties arising in connection with the operation and maintenance of the Project, then in any of said events, Authority shall forthwith notify City in writing as to the nature of the claim or litigation which could result in an increase in operation and maintenance expense. City shall have ten (10) days from receipt of such written notification in which to advise and comment to Authority concerning any claim, suit or demand for payment and Authority shall duly consider City's advice and

comments in any final disposition of said claim or demand for payment.

I. The transmission and clear well storage facilities described in Chapter IV of the initial engineering report described in the Original Contract shall be maintained and operated by City at its expense, and City covenants that it will operate and maintain said facilities. City agrees that it will save and hold harmless Authority from all claims, demands and causes of action which may be asserted by anyone on account of Authority's ownership of said transmission and clear well storage facilities so long as City is operating and maintaining said facilities.

Section 6. FORCE MAJEURE. If by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Contract, other than the obligation of City to make the payments required under subsection 4(B)(b)-(d) of this Contract, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States or the State of Texas or any Civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, partial or entire failure of water supply, and inability on part of Authority to deliver water hereunder for any reason, or City to receive water hereunder for any reason, or on account of any other causes not reasonably within the control of the party claiming such inability.

Section 7. UNCONDITIONAL OBLIGATION TO PAY DEBT SERVICE. Recognizing that Authority will use payments received by City and others to pay, secure and finance the issuance of the Bonds, it is hereby agreed that upon the issuance and sale of any Bonds by Authority to provide funds for the Project, City shall be unconditionally obligated to pay its proportionate share of the debt service on such Bonds, regardless of whether or not Authority is actually delivering water to City hereunder, or whether or not City actually takes water hereunder, whether due to Force Majeure or otherwise. Under such circumstances, the amount due to Authority from City shall be a percentage of the debt service on the Bonds for the period of any such failure of service hereunder. Such percentage shall be the last percentage used by Authority in determining City's Annual Payment prior to any such failure of service, and, in the event service is not begun hereunder, such percentage shall be that specified in Section 4C(a)(i) hereof. This covenant by City shall be for the benefit of the owners of the Bonds.

Section 8. TERM OF CONTRACT; MODIFICATION; NOTICES; STATE OR FEDERAL LAWS, RULES, ORDERS OR REGULATIONS.

A. TERM OF CONTRACT. This Contract shall be effective upon execution hereof and shall continue in force and effect until all Bonds have been paid and for so long thereafter as the parties hereto may agree by amendment hereof.

B. MODIFICATION. No change or modification of this Contract shall be made which will affect adversely the prompt payment when due of all moneys required to be paid by City under the terms of this Contract and no such change shall be effective which would cause a violation of any provisions of any Bond Resolution.

C. ADDRESSES AND NOTICE. Unless otherwise provided herein, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by either party to the other must be in writing and may be given or be served by depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party, or by prepaid telegram when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated herein, from and after the expiration of three days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changes as hereinafter provided, be as follows:

If to Authority, to:
Trinity River Authority of Texas
P. O. Box 60 (76004)
5300 South Collins (76018)
Arlington, Texas

If to City, to:
City of Huntsville
1212 Avenue M
Huntsville, Texas 77340

The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address by at least fifteen (15) days' written notice to the other party.

D. STATE OR FEDERAL LAWS, RULES, ORDERS OR REGULATIONS. This Contract is subject to all applicable Federal and State laws and any applicable ordinances, rules, orders and regulations of any local, state or federal governmental authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

Section 9. SEVERABILITY. The parties hereto agree that if any of the provisions of this Contract should be or be held to be invalid or to contravene the laws of this State, or the United States, such fact shall not invalidate the whole agreement, but it shall be construed as though not containing that particular provision, and the rights and obligations of the parties shall be construed and remain in force accordingly.

Section 10. CONTINUED SERVICE. The parties hereto agree that upon the expiration of this Contract that City shall have the right to continued service for an additional period of fifty (50) years, or for such other time as may be agreed, upon execution of an appropriate agreement between City and Authority.

Section 11. REMEDIES UPON DEFAULT. It is not intended hereby to specify (and this Contract shall not be considered as specifying) an exclusive remedy for any default, but all such other remedies (other than termination) existing at law or in equity may be availed of by either party hereto and shall be cumulative. Recognizing, however, that Authority's undertaking to provide and maintain a supply of water hereunder is an obligation, failure in the performance of which cannot be adequately compensated in money damages alone, Authority agrees, in the event of any default on its part, that City shall have available to it the equitable remedy of specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available to City. Recognizing that failure in the performance of any of City's obligations hereunder could not be adequately compensated in money damages alone, City agrees in the event of any default on its part that Authority shall have available to it the equitable remedy of specific performance in addition to any other legal or equitable remedies (other than termination) which may also be available to Authority. Notwithstanding anything to the contrary contained in this Contract, any right or remedy or any default hereunder, except the right of Authority to receive the Annual Payment which shall never be determined to be waived, shall be deemed to be conclusively waived unless asserted by a proper proceeding at law or in equity within two (2) years after the occurrence of such default. No waiver or waivers of any breach or default (or any breaches or defaults) by either party hereto of any term, covenant, condition, or liability hereunder or of performance by the other party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be waiver of subsequent breaches or defaults of any kind, character or description, under any circumstances.

[The balance of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies have caused this Contract to be duly executed in several counterparts, each of which shall constitute an original, all as of the day and year first above written.

TRINITY RIVER AUTHORITY OF TEXAS

BY

DANNY F. VANCE, General Manager

ATTEST:

JAMES LEE MURPHY, Secretary

(AUTHORITY SEAL)

CITY OF HUNTSVILLE, TEXAS

BY

Mayor

ATTEST:

City Secretary

(CITY SEAL)

APPROVED AS TO LEGALITY:

City Attorney



CITY OF Huntsville

Incorporated in 1845 under the Republic of Texas

October 18, 2006

Mr. Danny Vance
Trinity River Authority
P.O. Box 60
Arlington, TX 76004

Re: Trinity River Authority of Texas – City of Huntsville Raw Water Supply Contract dated August 24, 1976 (the “Contract”)

Dear Mr. Vance:

Please accept this letter pursuant to the Contract. This letter provides notice by City of Huntsville (the “City”) that it is exercising its option to increase the quantity of raw water Trinity River Authority of Texas (the “Authority”) will be obligated to sell City under the Contract by the amount of ten (10) MGD for a total obligation of twenty (20) MGD. The rates and standby charge associated with the increase will be implemented under the current terms.

City requests Authority’s approval for the increase to become effective less than twelve (12) months after the date of this written notice. Specifically, City requests the increase to become effective November 1, 2006.

We look forward to Authority’s response to this request.

Respectfully,

Kevin P. Evans
City Manager
936-291-5401

KPE/ljl
Encl.

cc: Jimmy Sims
TRA, Southern District Regional Manager
ADMINISTRATION



CITY OF Huntsville

Incorporated in 1845 under the Republic of Texas

STATE OF TEXAS §

COUNTY OF WALKER §

MINUTE ORDER

Councilmember Woodward made a motion to notify the Trinity River Authority of Texas that the City of Huntsville wishes to exercise its option for an additional 10MGD raw water at the rate of \$0.0283/1000 gals. payable annually in the amount of \$103,295 until the year 2020 as specified under the existing contract, and Councilmember Choate seconded the motion. The motion passed unanimously.

In witness whereof, I have set my hand and affixed the seal of the City of Huntsville, Texas, this 17th day of October 2006.

Danna Welter, City Secretary
City of Huntsville, Texas

